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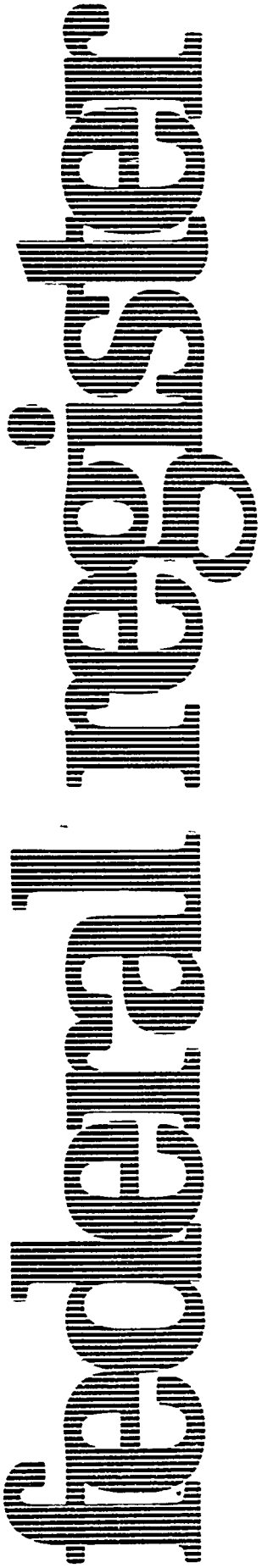

Monday
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Highlights

Telecommunications Device for the Deaf—Office of the Federal Register provides a new service for deaf or hearing impaired persons who need information about documents published in the Federal Register. See the Reader Aids section for the telephone listing.

Briefings on How To Use the Federal Register—See announcement in the Reader Aids Section at the end of this issue.

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Highlights

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CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

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Monday, April 23, 1979

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 928

Papayas Grown in Hawaii; Amendment of Expenses for 1978 Fiscal Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment of final rule.

SUMMARY: This amendment increases the previously approved expenses for the 1978 fiscal year of the Papaya Administrative Committee which locally administers the Federal marketing order covering papayas grown in Hawaii.

DATES: Effective January 1–December 31, 1978.

FOR FURTHER INFORMATION CONTACT: Charles R. Brader, 202–447–6393.

SUPPLEMENTARY INFORMATION: *Findings.* This amendment is issued under the marketing agreement and Order No. 928 (7 CFR Part 928), regulating the handling of papayas grown in Hawaii. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Papaya Administrative Committee, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act. This amendment has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee reports that an unanticipated increase in market development costs resulted in the need to increase the level of budgeted expenses. This action would not involve an increase in the rate of assessment as assessment income received during the period is sufficient to cover this increase.

Therefore, the provisions of paragraph (a) of § 928.207 *Expenses, rate of assessment, and carryover of unexpended funds* (43 FR 1785) is amended to read as follows:

§ 928.207 Expenses, rate of assessment, and carryover of unexpended funds.

(a) Expenses that are reasonable and likely to be incurred by the Papaya Administrative Committee during the period January 1, 1978, through December 31, 1978, will amount to $443,800.

* * * * *

It is found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until May 23, 1979 (5 U.S.C. 553) in that this increase in the amount of expenses authorized is a necessary administrative adjustment applicable only to a fiscal year which ended December 31, 1978, and the increased expenses will necessitate no increase in the rate of assessment.

(Secs. 1–19, 48 Stat. 31, as amended 7 U.S.C. 601–674)

Dated: April 18, 1979.

D. S. Kuryloski,
Acting Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79-12498 Filed 4-20-79; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

Contracts With Transportation Lines Addition of Singapore Airlines to Listing

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This is an amendment of the regulations of the Immigration and Naturalization Service to add a carrier to the list of transportation lines which have entered into agreements with the Commissioner of Immigration and Naturalization to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries. This amendment is necessary because transportation lines which have signed such agreements are published in the Service's regulations.

EFFECTIVE DATE: March 27, 1979.

FOR FURTHER INFORMATION CONTACT: James G. Hoofnagle, Jr., Instructions Officer, Immigration and Naturalization Service. Telephone: (202) 633–3048.

SUPPLEMENTARY INFORMATION: This admendment to 8 CFR 238.3 is published pursuant to section 552 of Title 5 of the United States Code (80 Stat. 383), as amended by Pub. L. 93–502 (88 Stat. 1561), and the authority contained in section 103 of the Immigration and Nationality Act (8 U.S.C. 1103), 28 CFR 0.105(b), and 8 CFR 2.1. Compliance with the provisions of section 553 of Title 5 of the United States Code as to notice of proposed rule making and delayed effective date is unnecessary in this instance because the amendment contained in this order adds a transportation line to the listing and is editorial in nature.

On March 27, 1979, the Commissioner of Immigration and Naturalization concluded an agreement with Singapore Airlines to guarantee the passage through the United States in immediate and continuous transit of aliens destined to foreign countries pursuant to section 238(d) of the Immigration and Nationality Act and 8 CFR Part 238. Accordingly, 8 CFR 238.3(b) will be amended by adding "Singapore Airlines" to the listing in alphabetical sequence.

In the light of the foregoing, the following amendment is hereby prescribed to Chapter I of Title 8 of the Code of Federal Regulations.

PART 238—CONTRACTS WITH TRANSPORTATION LINES

§ 238.3 [Amended]

In § 238.3 *Aliens in immediate and continuous transit,* the listing of transportation lines in paragarph (b) *Signatory lines* is amended by adding in alphabetical sequence, "Singapore Airlines."

(Sec. 103 and 238(d), 8 U.S.C. 1103 and 1228(d)).

Effective date: The amendment contained in this order became effective on March 27, 1979.

Dated: April 16, 1979.

Leonel J. Castillo,

Commissioner of Immigration and Naturalization.

[FR Doc. 79-12408 Filed 4-20-79; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF THE TREASURY

Comptroller of the Currency

12 CFR Part 7

Interpretive Rulings; Bank Service Corporation

AGENCY: Comptroller of the Currency, Treasury.

ACTION: Final rule.

SUMMARY: As a result of recent changes in 12 U.S.C. 1865 (Bank Service Corporation Act), the performance of certain services for national banks and their affiliates and subsidiaries is automatically subject to regulation and examination by the Comptroller of the Currency. Formerly, a national bank was required to give the Comptroller written assurances that the performance of such services for itself would be subject to regulation and examination. The new law does not require such assurances, and the amended ruling deletes any reference to them. Furthermore, the amended ruling sets forth the manner in which national banks are to notify the Comptroller of a service relationship.

EFFECTIVE DATE: April 23, 1979.

FOR FURTHER INFORMATION CONTACT: Robert R. Klinzing, Director, Examination Handbook Group, Office of the Comptroller of the Currency, Washington, D.C. 20219, (202) 447-1164.

SUPPLEMENTARY INFORMATION: Title III of the Financial Institutions Regulatory and Interest Rate Control Act of 1978 (Pub. L. 95-630) became effective March 10, 1979. Section 308 of Title III amended Section 5 of the Bank Service Corporation Act, 12 U.S.C. 1865, to read as follows:

> Whenever any bank which is regularly examined by a Federal supervisory agency, or any subsidiary or affiliate of such bank which is subject to examination by that agency, causes to be performed, by contract or otherwise, any bank services for itself whether on or off its premises—
>
> (1) Such performance shall be subject to regulation and examination by such agency to the same extent as if services were being performed by the bank itself on its own premises,
>
> (2) The bank shall notify such agency of the existence of a service relationship within 30 days after the making of such service contract or the performance of the service, whichever occurs first.

Prior law required that a national bank provide the Comptroller of the Currency written assurances from any service provider that the performance of such services would be subject to regulation and examination to the same extent as if the services were being performed by the bank itself on its own premises. Since the statute gives the Comptroller the clear authority to regulate and examine without assurances, all references to such assurances in the amended ruling have been deleted.

A national bank is required under the amended law to notify the Comptroller of the Currency of the existence of any new service relationship involving itself or any of its subsidiaries within thirty days after the making of a service contract or the performance of services, whichever occurs first. The notification requirement under this section does not apply, however, to service relationships involving affiliates of national banks. The amended ruling provides that notification must be given by a national bank to the Regional Administrator of National Banks for the region in which the bank is located. The notification must be in letter form and state the name and address of the servicer, the servicer's affiliation, if any, with the bank, and the nature of the services provided. The letter must be postmarked within the 30-day period provided in the statute. A National Bank is not required to provide this notice for contracts entered into prior to March 10, 1979.

The prior requirement that the assurance documents be maintained at the bank for review by the bank examiners has been deleted. However, banks may want to retain such documentation to establish the existence of service relationships prior to the effective date of the amended law. Similarly, some contractual provision may be desirable in all service agreements to protect a bank against unnecessary disruptions in the event of any dispute involving the authority of the Comptroller to examine or regulate a particular servicer.

Amended 12 C.F.R. Part 7.7390 is being published in full to conform the language of the regulation to the new statutory authority of the agency and to present the ruling in a more understandable manner. In light of the technical nature of the revisions, the lack of the imposition of any substantive new requirements, and the effective date of the statute, the Comptroller for good cause finds that the procedures prescribed by 5 U.S.C. § 553 relating to notice, public hearing and comment, and deferred effective date are unnecessary and would serve no useful purpose in this matter.

DRAFTING INFORMATION: The principal drafters of this document are Robert R. Klinzing, Director, Examination Handbook Group and David W. Roderer, Legal Advisory Services Division, Office of the Comptroller of the Currency.

Final Rule

The Comptroller amends 12 CFR Part 7 by revising Section 7.7390 to read as follows:

§ 7.7390 Bank services and bank service corporations.

(a) "Bank services" is defined to include check and deposit sorting and posting; computation and posting of interest and other credits and charges; preparation and mailing of checks, statements, notices, and similar items; or any other clerical, bookkeeping, accounting, statistical or similar function performed for a bank.

(b) Whenever a national bank, or any subsidiary or affiliate of the bank which is subject to examination by the Comptroller of the Currency causes to be performed, by contract or otherwise, any bank services for itself, whether on or off its premises, such performance shall be subject to regulation and examination by the Comptroller of the Currency to the same extent as if the services were being performed by the bank itself on its own premises. The bank shall notify the Comptroller of the Currency of the existence of a service relationship involving itself or any of its subsidiaries within 30 days after the making of such service contract, or the performance of the service, whichever occurs first. Such notification must be in letter form, directed to the Regional Administrator of National Banks for the region in which the bank is located. The letter must be postmarked within the allotted 30-day period and state the name and address of the servicer, the servicer's affiliation, if any, with the bank, and the nature of the services provided. Such notification is not required regarding arrangements to perform services for an affiliate of a national bank unless directly involving the bank or any of its subsidiaries.

(c) National banks are permitted to invest an amount not exceeding 10 percent of capital and surplus in the stock of a corporation organized to perform bank services for two or more banks. The term "invest," as used in this section, includes both the purchase of stock in and loans to a service corporation. Nothing in the Bank Service Corporation Act precludes banks from

sharing in the ownership of the corporation with individuals or with corporations other than banks.

(d) 12 U.S.C. 1863 prohibits a discriminatory denial of bank services by a bank service corporation to a competitor of any bank holding stock therein. In addition, such corporations may only perform bank services for banks. Bank services, however, as defined in the Act, include any service which a bank would ordinarily perform for a customer. Accordingly, if the bank undertakes to handle the payroll accounts or the accounts receivable of a customer, a bank service corporation may perform for the bank the service necessary to enable the bank to fulfill its undertaking.

(12 U.S.C. 1865)

John G. Heimann,
Comptroller of the Currency.

April 10, 1979.

[FR Doc. 79-12526 Filed 4-20-79; 8:45 am]
BILLING CODE 4810-33-M

FEDERAL RESERVE SYSTEM

12 CFR Part 202

Definition of Creditor

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending its Regulation B, Equal Credit Opportunity, to clarify that it covers persons, such as real estate brokers, home builders, and automobile dealers, who regularly refer applicants or prospective applicants to creditors, or who select or offer to select creditors to whom requests for credit may be made. The amendment provides that those persons are creditors, but only for the purposes of the regulation's general prohibitions of discrimination against credit applicants or discouraging applications on a prohibited basis. Those persons are not subject to the mechanical requirements of the regulation, such as those relating to notices and record retention.

EFFECTIVE DATE: May 21, 1979.

FOR FURTHER INFORMATION CONTACT: Dolores S. Smith, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-2412).

SUPPLEMENTARY INFORMATION: The Board's Regulation B, which implements the the Equal Credit Opportunity Act, applies to all persons who are creditors, as that term is defined by the regulation. The existing § 202.2(l) definition provides that a creditor is a person who in the ordinary course of business "regularly participates in the decision of whether or not to extent credit."

The staff of the Federal Trade Commission has urged the Board to amend that definition to include persons who in the ordinary course of business regularly "arrange for the extension of credit." The FTC staff expressed concern that real estate brokers may not be covered by Regulation B since ostensibly they do not regularly participate in credit decisions. The FTC staff points out that, by their participation in the credit application process, real estate brokers nevertheless may be in a position to influence the outcome. The FTC staff cites a recent HUD study [1] in support of the proposition that discriminatory "steering" by real estate brokers is the cause of severe problems faced by members of minority groups in obtaining housing and that credit discrimination may exacerbate this problem. The FTC staff believes there is authority for making the regulation applicable to steerers based on the statutory definition of "creditor," which includes "any person who regularly arranges for the extension" of credit (§ 702(e), 15 U.S.C. 1691a(e)).

In response to the FTC staff's request, the Board published for comment on October 26, 1978 (43 FR 49987), along with other proposals,[2] a proposed amendment to § 202.2(e) of Regulation B that, if adopted, would expressly include within the definition of creditor "any person who in the ordinary course of business regularly arranges for the extension of credit but does not participate in the credit decision * * *." The proposal defined "arranges for the extension of credit" as meaning "to refer applicants or prospective applicants to other creditors, or to select or offer to select creditors to which requests for credit may be made."

Comments on the proposed creditor definition amendment contain conflicting views on the need for any change and the form that a change should take. Real estate industry commenters strongly deny the existence of significant discriminatory steering when assisting customers in obtaining home financing. They point out that self-interest (the receipt of a commission) dictates that a broker make every reasonable effort to assure that a potential purchaser finds both a house and a source of credit. On the other hand, commenters representing minority groups and public interest organizations assert that discrimination in credit referrals is a serious problem and that minority group applicants need to be protected from credit steering toward available, but more onerous, credit terms. Industry commenters also noted that the ECOA applies only to "applicants" and does not reach prospective applicants such as persons still looking at houses to buy. Other commenters observed, however, that the statute expressly covers "arrangers," regardless of when the formal application process begins.

The extent to which possible discriminatory practices by brokers may be barred by other laws, such as the Fair Housing Act (42 U.S.C. 3601-3619), is not clear. That statute covers brokers in their selling and leasing activities, but not necessarily in their referral of clients to credit sources. Several commenters, including the Department of Housing and Urban Development and the Federal Home Loan Bank Board, therefore emphasized the desirability of amending Regulation B even if it might duplicate coverage under other anti-discrimination laws since the ECOA provides for both private and public enforcement initiatives.

Having carefully considered the comments and the arguments for and against the proposed change in the definition of creditor, the Board has decided expressly to include within the definition persons who regularly in the ordinary course of their business refer applicants to creditors or select creditors to whom credit applications will be submitted. In adopting that change, the Board has simplified the amendment, without altering its intended purpose. The proposal used the phrase "arranges for the extension of credit" and then defined that phrase to mean "to refer applicants or prospective applicants to other creditors, or to select or offer to select creditors to which requests for credit may be made." As adopted, the amendment eliminates the "arranges for the extension of credit" phrase and substitutes the explanation (with a few minor, stylistic changes) of what constitutes arranging for the extension of credit, thereby avoiding a proliferation of definitions.

Like the original proposal, the final amendment provides that persons who become creditors under the Regulation B definition solely because they regularly refer applicants or submit applications to other creditors who may extend

[1] "Housing Market Practices Survey," prepared jointly by the Department of Housing and Urban Development and the National Committee Against Discrimination, April 1978.

[2] The other proposals published for comment will be considered in the Board's review of Regulation B pursuant to its regulatory improvement project.

credit are not subject to the so-called "mechanical" regulatory requirements relating to applications (§ 202.5(b) through (e)), notices (§ 202.9), credit reporting (§ 202.10), record retention (§ 202.12), and collection of monitoring information (§ 202.13). However, instead of expressing the limited nature of the regulation's coverage in terms of the provisions from which those who engage in credit referral activities are exempt, as was done in the original proposal, the final amendment specifies the coverage simply and positively. They are subject to only two sections: the general ban on discrimination against applicants on a prohibited basis found in § 202.4 and the ban on discouraging applicants on a prohibited basis from applying for credit found in § 202.5(a).

The Board elected not to subject persons who engage in credit referral activities to the regulation's mechanical requirements because those rules were not designed to apply in a pre-application context. For example, a real estate broker, in assisting a buyer to find appropriate housing, may have a legitimate need for more information about the buyer and the buyer's family than § 202.5 of Regulation B would permit a credit extender to obtain. Furthermore, since the credit extender to whom a referral is made would have to comply with the mechanical rules, there appears to be little point in placing essentially duplicative notice, record retention, and monitoring information gathering requirements on a person solely engaged in referral activities.

Finally, the amendment, as adopted, modifies the definition of creditor to make clear that a creditor to whom an applicant or application has been referred is not liable for any violation of the ECOA or Regulation B committed by the person who made the referral unless the creditor receiving the referral knew or had reasonable notice of the violation before its involvement with the transaction. This is the same protection accorded under the regulation to assignees, transferees, subrogees, and similar parties.

The effect of the amendment is twofold. First, it expressly bars discrimination against credit applicants on a prohibited basis by persons who regularly as part of their business channel applicants or applications to credit sources. Second, it clearly places those creditors under the administrative enforcement jurisdiction of the agencies specified in § 704 of the ECOA, principally the FTC, and makes available to applicants and the Department of Justice the civil suit remedies set forth in § 706 of the Act (15 U.S.C. 1691c and 1691e).

The Board decided to adopt the amendment for two reasons. First, it believes that persons who regularly engage in credit referral activities in effect may participate in decisions of whether or not to extend credit as that standard is used in § 202.2(e) of Regulation B and therefore may be creditors for purposes of the regulation. From that perspective, the change merely clarifies the pre-amendment coverage of the regulation.

Second, to the extent that a person engaged in credit referral activities does not participate in credit decisions and therefore would not be considered a creditor absent the amendment, the Board believes that that person should be covered, at least to the extent of the basic proscriptions on discrimination, as a person "who regularly arranges for the extension" of credit as that phrase is used in the ECOA. Since persons making credit referrals would not be subject to any mechanical requirements, the Board saw no reason not to make clear that all parties involved in the credit application process, even those who only refer applicants or applications to credit sources, are barred from discriminating against applicants on a prohibited basis. As the Board recently stated in connection with its consumer and civil rights compliance program: "The Board believes that any type of discrimination prohibited by the civil rights laws is detrimental to the nation and to society."

Accordingly, for the reasons stated above and pursuant to § 703(a) of the ECOA (15 U.S.C. 1691b(a)), the Board amends 12 CFR 202.2(l) as follows:

§§ 202.2 Definitions and rules of construction.

* * * * *

(l) *Creditor* means a person who, in the ordinary course of business, regularly participates in the decision of whether or not to extend credit. The term includes a creditor's assignee, transferee, or subrogee who so participates. For purposes of §§ 202.4 and 202.5(a), the term also includes a person who, in the ordinary course of business, regularly refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made. A person is not a creditor regarding any violation of the Act or this Part committed by another creditor unless the person knew or had reasonable notice of the act, policy, or practice that constituted the violation before its involvement with the credit transaction. The term does not include a person whose only participation in a credit transaction involves honoring a credit card.

* * * * *

By order of the Board of Governors, April 11, 1979.

Theodore E. Allison,
Secretary of the Board.

[Reg. B; Docket No. R-0165]
[FR Doc. 79-12516 Filed 4-20-79; 8:45 am]
BILLING CODE 6210-01-M

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12 CFR Part 226

Truth in Lending; Official Staff Interpretation; Suspension of Effective Date and Republication for Public Comment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Effective date of official staff interpretation suspended; its text reprinted for public comment.

SUMMARY: The Board is suspending the effective date of official staff interpretation FC-0161, regarding proper disclosures for a credit sale transaction in which the downpayment is separately financed, published March 14, 1979 (44 FR 15475) and is republishing it for public comment. The agency is taking this action in response to a request for public comment submitted in accordance with 12 CFR Part 226.1(d)(3). The letter requesting a comment period is published below and immediately precedes the text of the official staff interpretation.

DATES: The effective date of FC-0161 is suspended until further notice. Comments must be received on or before May 23, 1979.

ADDRESS: Comments (including reference to FC-0161) to Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

FOR FURTHER INFORMATION CONTACT: Glenn E. Loney, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3867).

SUPPLEMENTARY INFORMATION: (1) The effective date, April 13, 1979, of official staff interpretation FC-0161 is suspended in accordance with 12 CFR Part 226.1(d)(2)(ii). The text of the letter requesting the opportunity for public comment appears below. This interpretation will not go into effect until final action is taken. Notice of such action will be published in the Federal

Register in approximately 60 days and will become effective upon publication.

(2) The text of official staff interpretation FC–0161 is republished for comment with the exception of language pertaining to its former effective date. Identifying details have been deleted to the extent required to prevent a clearly unwarranted invasion of personal privacy. The Board maintains and makes available for public inspection and copying a current index providing identifying information for the public subject to certain limitations stated in 12 CFR Part 261.6.

(3) Interested persons are invited to submit relevant comments. All material should be submitted in writing to: Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, and should be received not later than May 23, 1979. Comments will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

(4) After comments are considered, this official staff interpretation may be amended, may be rescinded or may remain unchanged. Final action regarding this official staff interpretation will appear in the Federal Register.

(5) Authority: 15 U.S.C. 1640(f).

National Consumer Law Center Inc.,
Boston, Mass., April 9, 1979.

Secretary,
Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

Re: Official Staff Interpretation of Regulation Z, No. FC–0161.

Dear Sir: The National Consumer Law Center, Inc.[1] requests public comment on Official Staff Interpretation of Regulation Z No. FC–0161, regarding the disclosure of the financing of downpayments as a separate transaction, and requests that the effective date be suspended pursuant to Reg. Z § 226.1(d).

FC–0161 represents the least acceptable of many possible solutions to the problem of disclosing "side-loans" and "loan splitting." The Interpretation requires that the label for a side-loan be "cash downpayment" and that the side-loan and the primary financing be disclosed as two unrelated transactions. FC–0161 will undermine the paramount and basic purposes of the TIL Act by defeating the opportunity of consumers to shop for credit and by fostering the confusion engendered by splitting the financing of a single credit extension into two or more parts. In addition to undermining the basic purposes of TIL disclosures, it will harden in a meaningless, technical way the fundamental concepts of what a "credit transaction" is and what are the responsibilities of a person "arranging" split financing. Finally, the Interpretation is written in an overly broad fashion so as to decide issues far beyond those raised by the request and transaction described.

It is simpler and less confusing to most consumers to receive a single TIL disclosure statement in connection with a single application for credit. When the financing and credit disclosures are split into two or more parts, the consumer is far more likely to be confused. The receipt of two or more disclosure statements with two or more different totals of payments, sets of insurance cost disclosures, finance charges, APR's along with two or more contracts, security agreements, insurance policies, etc. increases the confusion. The legally required TIL disclosures will increase that confusion because neither of the two disclosure statements refers to the other. While there are a range of disclosure approaches appropriate to reducing this confusion, the one proposed is the least elucidative.

Another major problem with the proposed interpretation is that it defeats the credit-shopping purposes of the Act. One of the two or more parts of the financing will be consummated and disclosed after the other. Thus a consumer is bound by one transaction before disclosures are provided in the other. If the second part of the financing to be disclosed is "primary," but the first contains substantial penalties for early payment (as is the case with the hypothesized finance company loans in most states), the consumer will be substantially penalized if he looks for alternative financing after the consummation of the first and upon disclosure of the other part. Thus, a fundamental purpose of the Act—credit-shopping—is completely frustrated by the proposed disclosure scheme.

Furthermore, the staff letter is overly broad in its rationale and conclusion. It would seem to permit a single credit extender to split transactions and disclose each part separately. For example, some car dealers are financing the "downpayment" part of the credit sale on their own open-end plans opened at the time of the sale and arranging the "primary" financing by assigning the sales contract to a finance company or bank. This has caused confusion for the consumers who do not understand that there were two parts to the financing scheme with completely different terms. This interpretation is so broadly written as to cover this type of split financing as well as the hypothesized side-loan. The rationale of the Interpretation, if not its literal language, could open a loophole of gigantic proportions. For example, most of the finance charge could be loaded into the "downpayment transaction" which could be short and smaller with the creditor emphasizing its easy payments, and the creditor could emphasize the low APR on the "primary transaction." After all, neither a "downpayment transaction" nor a "primary transaction" are defined in the Interpretation. Reg. Z of the Act, and the whole reason for enacting TIL is as the reluctance of most of the credit industry to vigorously compete with one another directly on the basis of credit terms. By permitting a part of the financing to be labelled "Cash Downpayment," it encourages the hiding of real nature of the financing and renders all other disclosures less meaningful. To cure this overbreadth, any interpretation should be limited to financing arrangements where the extenders of credit are unrelated, and the term "downpayment transaction" must be defined. However, a cure of the overbreadth will not reach the problems of confusion and the penalization of credit shopping.

Credit shopping can be aided and confusion can be minimized only by requiring some form of cross-referencing and combined disclosure statement which is provided before the consumer is bound in any way and which describes all parts of the financing. While there may be technical difficulty in providing an aggregate APR for the combined parts of the financing where the parts have different maturities, the extent of this difficulty and potential solutions to it should be thoughtfully explored during the comment period. Nevertheless, the cost, payment schedule and security interest disclosures should be aggregated in a single disclosure statement provided in advance of the consummation of any part of the financing with an explanation of how each part of the financing relates to the whole. In this way, credit shopping will be made possible and confusion will be reduced.

Very truly yours,

Robert J. Hobbs.

§ 226.8(c) Where the downpayment is separately financed, it may be disclosed as a "cash downpayment" on the credit sale disclosure for the underlying credit transaction.

February 28, 1979.

This will reply to your letter of * * *; and is in substitution of our letter to you dated February 5, 1979. Your inquiry concerns the proper disclosures under Regulation Z for a credit sale transaction in which the downpayment is separately financed. You posit the following situation: a dealer sells an item to a customer pursuant to an instalment sale contract providing for an immediate downpayment and instalment payments over a period of several months. Since the customer does not have sufficient cash to make the full downpayment, he or she is referred by the dealer to a finance company. The customer obtains financing of the downpayment and receives a set of Truth in Lending disclosures for that transaction (hereafter referred to as the "downpayment transaction"), then gives the downpayment to the dealer in cash, receives a set of Truth in Lending disclosures for the underlying credit sale transaction (hereinafter referred to as the "primary transaction"), and signs the retail instalment contraft. The dealer then

[1] The Center is a non-profit organization which represents low-income consumers and works with over 2,000 legal services attorneys nationwide representing low-income consumers in litigation, legislative and administrative proceedings. Forty to fifty inquiries concerning the Truth in Lending Act are received each month by the Center so that this legislation constitutes a major part of the Center's work program. The Center has published a Truth in Lending (TIL) manual, maintains a categorized list of all reported TIL litigation, has participated in numerous TIL suits at all levels of Federal and state judiciaries, and has generally maintained an active interest in TIL affairs across the country.

assigns the instalment sale contract to another financial institution.

You ask whether, in the disclosures for the primary transaction, the separately financed downpayment may be disclosed as a "cash downpayment" pursuant to § 226.8(c)(2). That section requires disclosure of:

The amount of the downpayment itemized, as applicable, as downpayment in money, using the term "cash downpayment," downpayment in property, using the term "trade-in," and the sum, using the term "total downpayment."

It is staff's opinion that since the dealer receives the downpayment in money it is appropriate for that amount to be included in the "cash downpayment" on the disclosures for the primary transaction.

Although there is a single sale of goods in the situation you pose, there are two credit transactions involved in this sale, and two sets of Truth in Lending disclosures are being given. The fact that the dealer may be a creditor with regard to both of these credit transactions (for example, as either the extender or arranger for the extension of credit with regard to the primary transaction, and as an arranger with regard to the downpayment transaction) does not affect the designation of the amount of the downpayment as a cash downpayment on the disclosures provided in connection with the primary transaction. The downpayment transaction is a separate credit transaction, for which full Truth in Lending disclosures have been given; the fact that the downpayment amount is itself the subject of a credit transaction does not affect its status as a cash downpayment as to the primary transaction. It is still a downpayment that the creditor receives in *money* (as opposed to property) even though payment of that money by the customer is deferred.

This is an official staff interpretation of Regulation Z issued in accordance with § 226.1(d)(2) of the regulation and limited in its applicability to the facts and issues discussed above.

Sincerely,

Nathaniel E. Butler,

Associate Director

Board of Governors of the Federal Reserve System, April 17, 1979.

Theodore E. Allison,

Secretary of the Board.

[Reg. Z, FC-0161]

[FR Doc. 79-12518 Filed 4-20-79; 8:45 am]

BILLING CODE 6210-01-M

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12 CFR Part 265

Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: In order to expedite and facilitate performance of certain of its functions, the Board of Governors has delegated authority for certain Federal Reserve Bank matters to the Board's General Counsel, the Staff Director for Federal Reserve Bank Activities, and to the Federal Reserve Banks.

EFFECTIVE DATE: March 21, 1979.

FOR FURTHER INFORMATION CONTACT: Theodore E. Allison, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-3257).

SUPPLEMENTARY INFORMATION: In order to expedite and facilitate performance of certain of its functions, the Board of Governors has made several new delegations of authority and has redelegated certain other functions. In addition, several delegations of authority previously unpublished have been added to the published rules.

The provisions of section 553 of Title 5, United States Code, relating to notice and participation and deferred effective date are not followed in connection with the adoption of the amendments, because the changes involved are procedural in nature and do not constitute substantive rules subject to the requirements of that section.

Effective March 21, 1979, § 265.2 is amended as follows:

1. By adding a new subparagraph (b)(8) as set forth below.

2. By deleting and reserving subparagraph (e).

3. By revising subparagraphs (d)(1)(2) and (5), and adding (6)-(8) as set forth below.

4. By revising subparagraphs (f)(25) and (34) and adding new subparagraphs (39)-(50).

§ 265.2 Specific functions delegated to Board employees and Federal Reserve Banks.

* * * * *

(b) The General Counsel of the Board (or in the General Counsel's absence, the acting General Counsel) is authorized:

* * * * *

(8) To approve provisions of Federal Reserve Bank operating circulars related to uniform services.

* * * * *

(d) The Staff Director for Federal Reserve Bank Activities or the Staff Director's designee is authorized;

(1) To approve—(i) Requests of up to $500,000 for each Reserve Bank for the purchase or lease of computer mainframes, if the acquisition is consistent with the long-range automation plan approved by the Board of Governors, and

(ii) Requests of up to $500,000 for each Reserve Bank for purchase or lease of automation or communications equipment not specifically included in the long-range automation plan approved by the Board of Governors, except computer mainframes.

(2) To approve proposed remodeling or renovation of or additions to Reserve Bank or Branch buildings if the cost is over $500,000, but not over $1,000,000, and if the project has been included in the capital or operating budget approved by the Board of Governors.

* * * * *

(5) To review Reserve Bank agreements with architects and other consultants for new construction or renovation projects over $100,000, but not over $1,000,000.

(6) Within the contingency allowance for a new building project, to approve individual construction change orders over $500,000, but not over $1,000,000.

(7) To exercise supervision over the following matters relating to Federal Reserve notes:

(i) Printing orders and

(ii) Contracts for shipment, giving consideration to:

(*a*) The desirability of maintaining a two-year reserve supply of $5 and $100 notes and a one-year supply of $1 notes, and

(*b*) Awarding contracts to the lowest bidder determined to be qualified.

(8) To modify the Reserve Bank Accounting Manual (after considering the views of the Subcommittee on Accounting Systems, Budgets and Expenditures of the Committee on Management Systems and Support Services of the Conference of the First Vice Presidents) in accordance with generally accepted accounting practices for banks, except that the following will not be authorized:

(i) Reserves for contingencies,

(ii) Charge-off of land to below estimated market value,

(iii) Charge-offs of buildings, or special allowances for depreciation that would result in full depreciation before 40 years after the date of completion of the structure, and

(iv) Write-down of Government securities below cost, including establishment of a valuation reserve.

* * * * *

(f) Each Federal Reserve Bank is authorized:

* * * * *

(25) To set the salaries of its officers below the level of First Vice President (including the General Auditor) within guidelines issued by the Board of Governors.

* * * * *

(34) Under the provisions of sections 3 and 11j of the Federal Reserve Act (12

U.S.C. § 521 and 248(j)] to undertake remodeling, renovation of or addition to its existing buildings or those of its branches if the expenditure for any completed project is not over $500,000, and if it has been included in the capital or operating budget approved by the Board of Governors.

* * * * *

(39) Under the provisions of the twenty-first paragraph of section 4 of the Federal Reserve Act (12 U.S.C. 306), to approve the appointment of assistant Federal Reserve agents (including representatives or alternate representatives of such agents).

(40) Under the provisions of the sixteenth paragraph of section 4 of the Federal Reserve Act (12 U.S.C. 304), to classify member banks for the purposes of electing Federal Reserve Bank class A and class B directors, giving consideration to:

(i) The statutory requirement that each of the three groups shall consist as nearly as may be of banks of similar capitalization, and

(ii) The desirability that every member bank have the opportunity to vote for a class A or a class B director at least once every three years.

(41) To increase its operating budget up to 1 percent of the annual operating budget.

(42) To purchase or lease new automation or communications equipment, except computer mainframes, at a cost of up to $1,000,000, if included in long-range automation plans and capital or operating budgets approved by the Board of Governors.

(43) To set the salary structure for nonofficial employees within guidelines issued by the Board of Governors; and to approve payment of salary above or below established salary ranges for one year.

(44) To approve payment of separation allowances upon the involuntary termination of employment of officers below the level of First Vice President (separation payments made to the General Auditor may be approved by the Chairman of the Board of Directors).

(45) In connection with building projects:

(i) To enter into agreements with architects and other consultants up to $100,000;

(ii) To administer the contingency allowance;

(iii) Within the contingency allowance for a new building, to approve construction change orders up to $500,000;

(iv) To approve exceptions to Buy American Policy for construction materials within authorized dollar limits; and

(v) To award contracts to other than the lowest bidder within authorized dollar limits.

(46) To sell real property (prior consultation with the Director of the Division of Federal Reserve Bank Operations is required for any property appraised at more than $1,000,000).

(47) To purchase or lease new fixed or operating equipment, other than automation or communications equipment, costing up to $250,000, if identified in capital or operating budgets approved by the Board.

(48) To make changes in territories served by offices within its district for specific functions.

(49) To extend the employment of officers and employees, except the President and First Vice President, for one year beyond mandatory retirement age.

(50) To grant performance cash awards.

(i) To Senior Vice Presidents, if approved by the President, and

(ii) To the General Auditor, if approved by the Chairman of the Board of Directors.

* * * * *

Board of Governors of the Federal Reserve System. April 10, 1979.

Theodore E. Allison,
Secretary of the Board.

[Docket No. R-0216]

[FR Doc. 79-12571 Filed 4-20-79; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

Cessna Model 441 Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new Airworthiness Directive (AD), applicable to Cessna Model 441 airplanes equipped with a Cessna installed electrical propeller anti-icing system. The AD requires the electrical wiring that is installed as a part of the propeller anti-icing system to be modified per Cessna Propjet Service Information Letter PJ 79-2. This modification will preclude the wiring from becoming overheated and causing smoke/fire in the cockpit with resultant serious safety hazards to the airplane occupants.

EFFECTIVE DATE: April 30, 1979 to all persons except those to whom it has already been made effective by airmail letter from the FAA dated March 16, 1979.

COMPLIANCE: Within 10 hours time-in-service after the effective date of this AD.

ADDRESSES: Cessna Propjet Service Information Letter Number PJ 79-2, dated March 5, 1979, applicable to this AD, may be obtained from Cessna Aircraft Company, Marketing Division, Attention: Customer Service Department, Wichita, Kansas 67201; Telephone (316) 685-9111. A copy of the Service Letter is contained in the Rules Docket, Office of the Regional Counsel, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106 and at Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION CONTACT: Earsa L. Tankesley, Aerospace Engineer, Engineering and Manufacturing Branch, Federal Aviation Administration, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374-3146.

SUPPLEMENTARY INFORMATION: There have been reports involving Cessna Model 441 airplanes wherein the electrical propeller anti-icing circuits routed through a nylon connector (J149, P149, and J150, P150, reference Cessna wiring diagrams for Model 441 airplanes) resulted in that connector becoming overheated. In these reported incidents, smoke was emitted from behind the instrument panel as a result of the connector overheating. If this possible overheat condition is not corrected, resulting smoke/fire could create a serious safety hazard for the airplane occupants. The FAA determined that this is an unsafe condition that could exist or develop in other airplanes of the same type design. It was also determined that an emergency condition existed, that immediate corrective action was required and that notice and public procedure thereon was impractical and contrary to the public interest. Accordingly, the FAA notified all known registered owners of the airplanes affected by this AD by airmail letter dated March 16, 1979. The AD became effective as to these individuals upon receipt of this letter. Since the unsafe condition described herein may still exist on other Cessna Model 441 airplanes equipped with a Cessna installed electrical propeller anti-icing system, the AD is being published in the

Federal Register as an amendment to Part 39 of the Federal Aviation Regulations (14 CFR Part 39) to make it effective to all persons who did not receive the letter notification.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) is amended by adding the following new Airworthiness Directive

Cessna: Applies to Model 441 (S/N's 441–0001 through 441–0083 and 441–0085) airplanes equipped with a Cessna installed propeller anti-icing system.

Compliance: Required as indicated unless already accomplished.

To preclude the possible occurrence of smoke/fire behind the pilot's instrument panel, accomplish the following:

(A) Within the next 10 hours time-in-service, except for those airplanes previously modified, modify the propeller anti-icing electrical wiring in accordance with Cessna Propjet Service Information Letter PJ 79–2 dated March 5, 1979.

(B) Any equivalent method of compliance with this AD must be approved by the Chief, Engineering and Manufacturing Branch, FAA, Central Region.

This amendment becomes effective on April 30, 1979 to all persons except those to whom it has already been made effective by an airmail letter from the FAA dated March 16, 1979.

Secs. 313(a), 601 and 603 of the Federal Aviation Act of 1958, as amended, (49 U.S.C. 1354(a), 1421 and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); Sec. 11.89 of the Federal Aviation Regulations (14 CFR Sec. 11.89).

NOTE.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A copy of the final evaluation prepared for this document is contained in the docket. A copy of it may be obtained in writing to Earsa L. Tankesley, Aerospace Engineer, Engineering and Manufacturing Branch, Federal Aviation Administration, Central Region, 601 East 12th Street, Kansas City, Missouri 64106, Telephone (816) 374–3146.

Issued in Kansas City, Missouri on April 12, 1979.

C. R. Melugin, Jr.,
Director, Central Region.

[Docket NO. 79–CE–4–AD; Amendment 39–3451]
[FR Doc. 79–12576 Filed 4–20–79; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 39

Piper Aerostar Model 600, 601, and 601P Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires installation of a seal and certain repair actions in the nacelle area of the Piper Aerostar Airplanes. The purpose of this AD is to prevent the accumulation of flammable fluids and/or vapors from collecting in the nacelle area immediately behind the engine fire wall. This AD is necessary to prevent explosion and/or fire in the exhaust tunnel area of the engine nacelles which could produce damage to the surrounding supporting structure of the wing.

DATE: Effective May 24, 1979.

Compliance schedule—As prescribed in the body of the AD.

ADDRESS: The applicable service information may be obtained from: Piper Aerostar Customer Service Department, 2560 Skyway Drive, Santa Maria, California 93454.

Also, a copy of the service information may be reviewed at, or a copy obtained from: Rules Docket in Room 916, FAA, 800 Independence Avenue, SW., Washington, D.C. 20591; or Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, California 90261.

FOR FURTHER INFORMATION CONTACT: Jerry Presba, Executive Secretary, Airworthiness Directive Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: (213) 536–6351.

SUPPLEMENTARY INFORMATION: There have been a number of instances of fuel leaking into and fuel vapors collecting in the nacelle area immediately behind the engine fire wall. Presently there are no provisions for drainage or ventilation of this area. As a result, there has been at least one incident of an explosion occurring in this area causing damage to the exhaust tunnels and the surrounding supporting structure. The manufacturer has issued a service bulletin which details procedures for sealing, drainage, and ventilation of the engine nacelle area. Since this condition is likely to exist or develop on other airplanes of the same type design, an airworthiness directive is being issued which requires pre-flight check until the accomplishment of sealing, drainage, and ventilation of the engine nacelle area.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than thirty (30) days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

Piper: (Ted Smith) applies to Aerostar Model 600, 601, and 601P Airplanes certificated in all categories. Compliance required as indicated.

To prevent possible fire or explosion in the area aft of the fire wall in the engine nacelles, accomplish the following:

(a) Within 10 hours time in service from the effective date of this AD, prior to engine start for each flight, check the lower engine nacelle cowling and the lower wing surface just outboard of the engine nacelle for wetting or other indications of fuel leakage. The checks required by this AD may be performed by the pilot.

Note 1.—Removal of the engine or nacelle cowling is not required to perform this check.

Note 2.—For the requirements regarding the listing of compliance and method of compliance with this AD in the airplane's permanent maintenance record, see FAR 91.173.

(b) If fuel stains, discoloration or any other signs of leakage are observed, the source of leakage must be determined and the leak repaired prior to further flight.

(c) Within the next ninety (90) days from the effective date of this AD or by the next annual inspection after the effective date of this AD, whichever occurs later, rework the aft nacelle and fire wall area to provide sealing, drainage, and ventilation per Part II of Piper Aerostar Service Bulletin 600–80, dated April 6, 1979.

(d) Pre-flight inspections required by (a) may be discontinued after rework per (c) is accomplished.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of repairs required by this AD.

(f) Alternative inspections, modifications, or other actions which provide an equivalent level of safety may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

This amendment becomes effective May 24, 1979.

[Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.89]

Issued in Los Angeles, California on April 10, 1979.

Benjamin Demps, Jr.,
Acting Director, FAA Western Region.

[Docket No. 79-WE-6-AD; Amdt. 39-3449]
[FR Doc. 79-12575 Filed 4-20-79; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

Lockheed-California Company Model L-1011-385 Series Airplanes; Airworthiness Directives

AGENCY: Federal Aviation Administration [FAA] DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive [AD] which requires inspection, installation of retainers and replacement, if necessary, of the main landing gear truck pivot pins on the main landing gear assemblies of the Lockheed-California Company L-1011-385 series aircraft. The AD is required to preclude possible failures of the main landing gear truck pivot pin assemblies which could result in a loss of a main landing gear truck assembly, and subsequent degradation of controllability of the airplane during taxiing, takeoff or landing.

DATES: May 23, 1979.

Initial compliance required within the next 50 hours time in service from the effective date of this AD.

ADDRESSES: The applicable service information may be obtained from: Lockheed-California Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Support Contracts, Department 63-11, U33, B-1.

Also, a copy of the service information may be reviewed at, or a copy obtained from: Rules Docket in Room 916, FAA, 800 Independence Avenue, SW., Washington, D.C. 20591; or Rules Docket in Room 6W14, FAA Western Region, 15000 Aviation Boulevard, Hawthorne, California 90261.

FOR FURTHER INFORMATION CONTACT: Jerry J. Presba, Executive Secretary, Airworthiness Directives Review Board, Federal Aviation Administration, Western Region, P.O. Box 92007, World Way Postal Center, Los Angeles, California 90009. Telephone: [213] 536-6351.

SUPPLEMENTARY INFORMATION: There has been a report of fracture of a main landing gear truck pivot pin. The fracture of this main landing gear truck pivot pin is attributed to crack(s) caused by a friction burn phenomenon. Over-tempered martensite was identified in the crack zone and the cracks had a "dish like" appearance. A possible cause of friction heat is the rapid oscillation of the truck during landing impact under certain conditions. Previous inspections of pivot pins revealed existence of cracks on some of the pins. Prior to the fracture of the above pivot pin, the crack propagation rate of the pivot pin crack was postulated to be quantitatively predictable and certain inspection intervals were recommended by the manufacturer as safe operating limits. The occurrence of the fracture of a pivot pin due to cracks similar to those found previously indicated that pin crack propagation rate does not lend itself to accurate quantitative analysis. At this time, the complexity of the pivot pin crack initiation, propagation and elimination does not render itself to an accomplishment of a terminating action in which a high level of confidence exists. Consequently, an interim inspection of the main landing gear truck pivot pins, installation of the "fail-safe" retainers and replacements of cracked pins as necessary, must be accomplished to prevent a possible failure of the truck pivot pin assemblies which could result in possible loss of a main landing gear truck assembly, and subsequent degradation of controllability of airplane during ground maneuvering.

Since the situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable and good cause exists for making this amendment effective in less than 30 days.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, § 39.13 of Part 39 of the Federal Aviation Regulations (14 CFR 39.13) is amended, by adding the following new airworthiness directive:

Lockheed-California Company. Applies to Lockheed-California Company L-1011-385 series airplanes certificated in all categories:

To preclude failure of the main landing gear truck pivot pins, P/N 1523058-101 or -103, perform the following, unless already accomplished:

(a) Within the next 50 hours time in service after the effective date of this AD, unless already accomplished, or unless paragraph (b) or (c), below, has already been accomplished, perform a visual inspection of the open end inside surface of the truck pivot pins in accordance with Lockheed wire PSC/78-46863-OL, dated October 25, 1978. If there is a visual indication of a crack, the pin must be inspected before further flight in accordance with paragraph (b) of this AD, or replaced with a new pin.

Note.—For most reliable results, the above visual inspection should be conducted with a good source of light and a mirror, and only after the open end inside surface is thoroughly cleaned of all accumulated dirt and grease.

(b) Within the next 300 hours time in service after the effective date of this AD, unless already accomplished or unless paragraph (c) has already been accomplished, perform the ultrasonic inspection of the open end inside surfaces in accordance with Part I of Lockheed-California Company Service Bulletin 093-32-149, Revision 2.

(1) If there is no ultrasonic indication or if it is not in excess of Standard (Reflector) "A", repeat the inspection at 300 hours time in service intervals until paragraph (c) is accomplished.

(2) If there is an ultrasonic indication in excess of Standard (Reflector) "A", but less than one inch in the Standard (Reflector) "B" location repeat the inspection at 150 hours time in service intervals until paragraph (c) is accomplished.

(3) If there is an ultrasonic indication in excess of one inch in the Standard (Reflector) "B" location remove the cracked pin and replace with like serviceable item before next flight.

(c) Install landing gear truck pivot pin "fail-safe" retainer per Part 2 of Lockheed-California Company Service Bulletin 093-32-149, Revision 2 in accordance with the following schedule:

(1) Within 1500 hours time in service from the effective date of this AD for all aircraft except as provided otherwise in paragrph (c)(2).

(2) Within 2500 hours time in service from the effective date of this AD for aircraft which have been satisfactorily inspected per the requirement of Part 2 of Lockheed-California Company Service Bulletin 093-32-135.

Note.—The installation of the above "fail-safe" retainer is considered to be an interim safety action.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections required by this AD.

(e) Equivalent inspection procedures and truck pin retainer installation may be used when approved by the Chief, Aircraft Engineering Division, FAA Western Region.

This amendment becomes effective May 23, 1979.

[Secs. 313(a), 601, and 603, Federal Aviation Act of 1958, as amended (49 U.S.C. 1354(a), 1421, and 1423); Sec. 6(c) Department of Transportation Act [49 U.S.C. 1655(C)]; and 14 CFR 11.89]

Issued in Los Angeles, California on April 9, 1979.

Benjamin Demps,
Acting Director, FAA Western Region.

[Docket No. 79-WE-4-AD; Amdt. 39-3448]
[FR Doc. 79-12574 Filed 4-20-79; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 71

Designation of Federal Airways, Area Low Routes, Controlled Airspace, and Reporting Points; Alteration of Control Zone and Transition Area: Ponca City, Okla.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The nature of the action being taken is an alteration of the control zone and transition area at Ponca City, Oklahoma. The intended effect of the action is to provide controlled airspace for aircraft executing instrument approach procedures to the Ponca City Municipal Airport and the Blackwell/Tonkawa Airport. The circumstances which created the need for the action are the cancellation of an instrument approach procedure and revision to other procedures, which will eliminate the necessity for controlled airspace to the north and southwest of the Ponca City Municipal Airport.

EFFECTIVE DATE: June 14, 1979.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone 817-624-4911, extension 302.

SUPPLEMENTARY INFORMATION: The nondirectional radio beacon (NDB) has been relocated at the Ponca City Municipal Airport which canceled the instrument approach from the southwest. The relocation of the NDB and installation of a partial instrument landing system (ILSP) to Runway 17, which realigns the approach procedures to the Ponca City Municipal Airport, alters the requirements for airspace protecting aircraft executing instrument approach procedures to the Ponca City Municipal Airport. Since this reduces the airspace required for aircraft executing instrument approach procedures, circulation and public notice of this action is not considered necessary.

The Rule

This amendment to Subpart F and Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) alters the Ponca City, Okla., control zone and transition area. This action provides controlled airspace for the protection of aircraft executing instrument approach procedures to the Ponca City Municipal Airport and the Blackwell/Tonkawa Airport.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administration, Subpart F and Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 353) and (44 FR 442) are amended, effective 0901 GMT, June 14, 1979, as follows:

In Subpart F, 71.171 (44 FR 353), the Ponca City, Okla., control zone is altered as follows:

Within a 5-mile radius of the Ponca City Municipal Airport (Latitude 36°43'41"N., Longitude 97°05'57"W.).

In Subpart G, 71.181 (44 FR 442) the Ponca City, Okla., transition area is altered as follows:

That airspace extending upward from 700 feet above the surface, within a 6-mile radius of the Ponca City Municipal Airport (Latitude 36°43'41"N., Longitude 97°05'57"W.), and 2 miles each side of the Pioneer, Oklahoma, VORTAC 297° radial, extending from the 6-mile radius area to 8 miles NW of the VORTAC, and within 1.5 miles each side of the 180° bearing from the Ponca City LOM, extending from the 6-mile radius area to the LOM, and within a 5-mile radius of the Blackwell/Tonkawa Airport (Latitude 36°44'40"N., Longitude 97°20'58"W.), and 2 miles each side of the Pioneer, Oklahoma, VORTAC 269° radial, extending from the 5-mile radius to the VORTAC, and 2.5 miles each side of the 180° bearing from the Blackwell/Tonkawa Municipal Airport, extending from the 5-mile radius to 6 miles south of the airport, and 2.5 miles each side of the 360° bearing from the Blackwell/Tonkawa Municipal Airport, extending from the 5-mile radius to 6 miles north of the airport.

(Sec. 307(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a); and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Fort Worth, Texas, on April 10, 1979.

Henry N. Stewart,

Acting Director, Southwest Region.

[Airspace Docket No. 79-ASW-12]

[FR Doc. 79-12578 Filed 4-20-79; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

Prohibited Trade Practices and Affirmative Corrective Actions; Indiana Dental Association, et al.

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, requires an Indianapolis, Ind. dental association and its fourteen component societies to cease establishing or engaging in any policy, act or practice that may induce their members to refuse to submit data requested by third-party payers for benefit determination; compel third-party payers to alter provisions of any health care benefits program; influence members to render other than independent judgements; or restrict consumers and third-party payers in their choice of dentists and/or dental consultants. The association and its component societies are further required to mail a copy of the complaint and order to each of their members, together with a letter advising them that they are free to choose their own course of action in dealing with dental health care insurance plans.

DATES: Complaint and order issued March 14, 1979.*

FOR FURTHER INFORMATION CONTACT: FTC/CD, Alan K. Palmer, Washington, D.C. 20580 (202) 523-3455.

SUPPLEMENTARY INFORMATION: On Friday, November 17, 1978, there was published in the Federal Register, 43 FR 53767, a proposed consent agreement with analysis In the Matter of Indiana Dental Association, a corporation, First District Dental Society, a corporation, Indianapolis District Dental Society, a corporation, Isaac Knapp Dental Society, a corporation, Western Indiana Dental Society, a corporation, Ben Hur Dental Society, an unincorporated association, East Central Dental Society, an unincorporated association, Eastern Indiana Dental Society, an unincorporated association, Greene District Dental Society, an unincorporated association, North Central Dental Society, an unincorporated association, Northwest Dental Society, a corporation, South Central Dental Society, an unincorporated association, South Eastern Dental Society, an

*Copies of the Complaint and Decision and Order filed with the original document.

unincorporated association, Wabash Valley Dental Society, an unincorporated association, West Central Dental Society, an unincorporated association, for the purpose of soliciting public comment. Interested parties were given sixty [60] days in which to submit comments, suggestions or objections to the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR 13, are as follows: Subpart—Coercing and Intimidating: § 13.350 Customers or prospective customers; § 13.367 Members. Subpart—Combining or Conspiring: § 13.384 Combining or conspiring; § 13.395 To control marketing practices and conditions. Subpart—Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533–20 Disclosures; 13.533–60 Release of general, specific, or contractual constrictions, requirements or restraints.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.)

Carol M. Thomas,
Secretary.

[Docket C-2957]

[FR Doc. 79-12523 Filed 4-20-79; 8:45 am]

BILLING CODE 6750-01-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1040

Interim Policy and Procedure for Classifying, Evaluating, and Regulating Carcinogens in Consumer Products; Withdrawal of Statement of Policy and Procedure

AGENCY: Consumer Product Safety Commission.

ACTION: Withdrawal of statement of policy and procedure.

SUMMARY: The Commission withdraws its interim general statement of policy and procedure concerning the classification, evaluation, and regulation of substances in consumer products that may pose a risk of cancer to humans. The statement is withdrawn for several reasons. First, CPSC has joined with several other agencies in preparing and issuing an interagency document describing the scientific bases for identifying potential carcinogens and estimating their risks. CPSC, EPA, and FDA intend to publish the document shortly for notice and comment. The scientific principles in that document are similar to those in the policy issued by the Commission on an interim basis. The Commission believes that this document makes it presently unnecessary and duplicative for the CPSC to continue independently with the further development of a separate statement regarding the scientific principles underlying the regulation of carcinogens. Second, the Commission has ample authority under the statutes it administers to regulate suspected carcinogens in consumer products on a case by case basis without a formal statement of policy. The Commission believes that it can for the present effectively and efficiently protect consumers from the risk of carcinogens in consumer products by focusing its resources on the active regulation of carcinogens in consumer products on a case by case basis rather than by diverting resources to possibly protracted litigation (see discussion below) regarding the policy. The public uncertainty and confusion likely to be generated during the many months it would take to resolve the litigation might impair the Commission's ability to protect the public from unreasonable risks of injury associated with carcinogens in consumer products.

EFFECTIVE DATE: The policy and procedures is withdrawn effective April 23, 1979.

ADDRESS: All material relevant to this policy and procedure statement, including any comments that have been received, may be seen in, or copies obtained from, the Office of the Secretary, Consumer Product Safety Commission, 3rd Floor, 1111 18th Street NW., Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: David Melnick, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, 202–634–7770.

SUPPLEMENTARY INFORMATION:

Background

In the Federal Register of June 13, 1978 (43 FR 25658), the Commission published an interim statement of its policy and procedure for classifying, evaluating, and regulating carcinogens in consumer products. The interim statement, on which comment was solicited, established a classification scheme under which the Commission, on the basis of a review of existing data, would provisionally assign substances to one of three categories (A, B, or C) based on the type and quality of the data available concerning a substance's carcinogenic potential. The Commission would publish the provisional classification of a substance in the Federal Register for comment. On the basis of the comments received, the Commission would affirm or revise the provisional classification. The classification would determine the priority the Commission would give to further evaluation of the substance. The category to which a substance was assigned, however, would have no legal effect on the substance or on products containing the substance.

The Commission was considering the first provisional classification of a substance when a lawsuit, brought by several individual chemical manufacturers and a trade association of chemical manufacturers, was filed in the United States District Court for the Western District of Louisiana (*Dow Chemical, USA* v. *Consumer Product Safety Commission*, Civil Action No. 781166, W.D. La.). The lawsuit raised certain procedural and substantive objections to the interim statement and its implementation through provisional classification.

On September 28, 1978, the District Court entered an order, preliminarily enjoining the Commission, "[p]ending a final determination on the merits of this action or until further order of this court, from provisionally classifying . . . any . . . consumer product pursuant to the regulations promulgated by defendant on June 13, 1978, 43 FR 25658–665." The District Court, in its November 1, 1978 opinion setting forth its reasons for issuing the preliminary injunction (459 F. Supp. 378), found that the plaintiff was likely to succeed in showing that the Commission violated the Administrative Procedure Act (APA) by issuing the policy and procedure as effective on the date of publication without first providing notice and an opportunity for comment. (On November 24, 1978, a notice of appeal of the District Court's decision was filed on behalf of the Commission.)

Recognizing that the statement of policy and procedure and the litigation concerning it had caused some public uncertainty as to the policy's meaning and status, the Commission, in the Federal Register of December 28, 1978 (43 FR 60436), published a clarification of Commission intent and reopened the comment period with respect to the interim statement of policy and procedure. The clarification notice

emphasized that the classification of a substance under the policy would mean that the substance would have a higher priority for further staff evaluation than substances not so classified; that all applicable statutory procedures would be adhered to in any rulemaking proceeding commenced with respect to that substance; and that the scientific principles set forth in the policy would not be binding and would be fully subject to challenge before the Commission, both as to their general validity and their specific application in an individual rulemaking proceeding.

The Commission filed a motion for reconsideration of the order entering a preliminary injunction. After hearing arguments (by written submissions) of the parties, the District Court, on February 13, 1979, entered an order reaffirming its original decision that the statement of policy and procedure was a rule whose issuance violated the APA insofar as it would be implemented without prior notice and an opportunity to comment.

While this litigation has been proceeding, the Interagency Regulatory Liaison Group (IRLG), consisting of CPSC, the Environmental Protection Agency (EPA), the Food and Drug Administration (FDA), and the Occupational Safety and Health Administration (OSHA), has prepared and issued a document describing the scientific bases for identifying potential carcinogens and evaluating their risks. (The Food Safety and Quality Service (FSQS) of the U.S. Department of Agriculture has recently joined the IRLG.) The scientific principles in this document are similar to those in the Commission's interim statement of policy and procedure. The Commission has contributed to the development of this interagency document and is participating in its further refinement through scientific peer review. In addition, CPSC, EPA, and FDA intend shortly to publish the document for notice and comment.

Reasons for withdrawal of the Interim Statement of Policy and Procedure

After careful consideration of the events described above, and an evaluation of how it might best proceed to protect consumers from any unreasonable risks of injury with respect to carcinogens in consumer products, the Commission has decided to withdraw its interim statement of policy and procedure and to continue for the present time to regulate carcinogens in consumer products on a case by case basis as provided in the statutes it administers. It has proceeded in this manner before, and is prepared to take individual actions against carcinogens in the future. (See, for example, the ban on vinyl chloride aerosols, 43 FR 12308, March 24, 1978; the interpretation of the Federal Hazardous Substances Act as banning TRIS in children's sleepwear, 42 FR 61621, December 6, 1977; the ban of consumer patching compounds and artificial emberizing materials containing respirable free-form asbestos, 42 FR 63354, December 15, 1977; and the proposed ban of benzene in consumer products, 43 FR 21839, May 19, 1978.) Moreover, the Commission has recently granted, in part, a petition by the Environmental Defense Fund relating to the investigation of particular consumer product categories to see if they contain potential carcinogens to which consumers may be exposed.

The Commission's decision not to proceed further at this time with its own carcinogen policy is particularly influenced by the agreement among CPSC, EPA, and FDA to promptly publish for public comment the scientific risk assessment document mentioned above. The report describes the scientific bases for identifying and evaluating potential carcinogens. It also describes methods for estimating the risks such compounds may hold for people. The document was prepared by the "Work Group on Risk Assessment" of the IRLG with assistance from senior scientists at the National Cancer Institute and the National Institute of Environmental Health Sciences. The report represents the best judgments of the agencies' scientists at the present time and has been accepted by the Journal of the National Cancer Institute for publication and scientific peer review. Interested members of the public will shortly have an opportunity to comment on the report through a notice and comment proceeding following publication of the document in the Federal Register. This dual publication process will enable the broadest public and scientific review and comment on the risk assessment document.

The Commission has received many comments on the June 13, 1979 CPSC interim statement of policy and procedure. The Commission believes these comments will be useful to the group that evaluates the comments received on the interagency document, since many of the scientific issues are similar. The Commission has directed its staff to review the comments and intends to transmit the comments along with the product of the staff review to the interagency group for its consideration. The Commission expects its staff to continue to actively screen substances and consumer products for purposes of bringing to the Commission's attention those substances or products where available data suggest that more comprehensive further testing, investigation, or possible formal regulatory action is warranted to protect consumers from carcinogenic risks in consumer products under the applicable statutory standards.

The Commission decision to proceed for the present in a case by case fashion as to potential carcinogens in consumer products and to join in the expeditious publication of the IRLG risk assessment document makes it duplicative, unnecessary, and unproductive for the Commission to proceed with its own carcinogen policy and to pursue the *Dow* litigation. In this regard the Commission believes that continued public uncertainty and confusion regarding the interim policy for the many months it would likely take for a final judicial determination of the pending litigation are not in the public interest. Moreover, the Commission concludes that the benefits to be derived from a favorable determination of that case are not such as to warrant continued litigation. In light of the Commission's decision to withdraw the interim policy, the Commission has decided also to withdraw its appeal, even though it continues to believe that implementation of the interim policy before the comments were considered and a final policy issued did not violate the APA, and that publication of a provisional classification under the policy would not have caused "irreparable injury."

Conclusion

For the foregoing reasons, and pursuant to the Consumer Product Safety Act, Pub. L. 92–573, 86 Stat. 1207 *et seq.*, as amended, 15 U.S.C. 2051 *et seq.*, and the Federal Hazardous Substances Act, Pub. L. 86–613, 84 Stat. 372 *et seq.*, as amended, 15 U.S.C. 1261 *et seq.*, the Consumer Product Safety Commission revokes Part 1040 of Title 16, Chapter II, Subchapter A, of the Code of Federal Regulations.

Effective Date: *April 23, 1979.*

Dated: *April 18, 1979.*

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 79-12555 Filed 4-20-79; 8:45 am]

BILLING CODE 6355-01-M

INTERNATIONAL TRADE COMMISSION

19 CFR Part 200

Employee Responsibilities and Conduct; Revisions in Conflict of Interest Requirements

AGENCY: United States International Trade Commission.

ACTION: Notice of Rulemaking.

SUMMARY: The Commission is exercising authority in conformity with section 208(b) of Title 18, United States Code, to exempt certain types of financial interests from the conflict of interest provisions of section 208(a) of Title 18, United States Code, as being too remote or inconsequential to affect Commission employees' integrity or services. The ownership of shares in widely-held, diversified mutual funds or regulated investment companies, regardless of their value, as well as ownership of state, local, or other noncorporate bonds, regardless of their value, are being exempted from these requirements. This notice of rulemaking is being issued by the Commission following receipt of written concurrence from the Office of Government Ethics.

EFFECTIVE DATE: May 23, 1979.

FOR FURTHER INFORMATION, CONTACT: The Honorable George M. Moore, Counselor for Employee Responsibilities and Conduct, United States International Trade Commission, 701 E Street, N.W., Washington, D.C. 20436, telephone (202) 523–0144.

Section 200.735–102(c) of Title 19, Part 200, of the *Code of Federal Regulations* is amended to read as follows:

§ 200.735–102(c) Definitions.

* * * * *

(c) "Employee" means a Commissioner, employee, or special government employee of the Commission, but, for the purpose of sections 200.735–114 through 200.735–114c and 200.735–116 through 200.735–123, the term does not include a Commissioner or a special Government employee.

* * * * *

Section 200.735–107 of Title 19, Part 200, of the *Code of Federal Regulations*, is amended through the addition of subsection (c) which reads as follows:

§ 200.735–107 Financial interests.

* * * * *

(c) Pursuant to the authority contained in 18 U.S.C. 208(b), the following types of financial interests are considered too remote or inconsequential to affect a Commission employee's integrity or services and do not constitute a conflict of interest under 18 U.S.C. 208(a):

(1) In widely-held, diversified mutual funds or regulated investment companies, regardless of their value; and

(2) In state or local government bonds, or other noncorporate bonds, regardless of their value.

Section 200.735–115 of Title 19, Part 200, of the *Code of Federal Regulations* is amended to read as follows:

§ 200.735–115 Forms—Interests not to be reported.

(a) Statements required to be submitted by the provisions of this subpart shall be prepared on forms (the format of which is prescribed by the Office of Government Ethics, Office of Personnel Management) available from the Deputy Counselor.

(b) Employees, GS–15 and below, who are required to file a statement of employment and financial interests under § 200.735–114 of this part, need not report to the Deputy Counselor those financial interests specified in §§ 200.735–107(c) (1) and (2) of this part. Commissioners and Commission employees, GS–16 and above, are required to report the financial interests specified in §§ 200.735–107(c) (1) and (2) of this part under section 202(a) of the Ethics in Government Act of 1978.

By Order of the Commission.

Issued: April 18, 1979.

Kenneth R. Mason,
Secretary.

[FR Doc. 79–12521 Filed 4–20–79; 8:45 am]
BILLING CODE 7020–02–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

Manufacturers and Retailers Excise Taxes; Definition of Price for Purposes of Manufacturers Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 4216(b) of the Internal Revenue Code of 1954, relating to the definition of price, including constructive sale price, for the purpose of the manufacturers excise tax. These regulations adopt, in final form, the regulations that were reserved in T.D. 7536 (43 FR 13512). The regulations provide necessary guidance to the public for compliance with the law and affect all persons required to pay manufacturers and retailers excise taxes.

DATE: These regulations are generally effective for sales made after December 31, 1958. It should be noted, however, that the tax on bus chassis and bodies was repealed as of November 10, 1978 by section 231 of the Energy Act of 1978 (Pub. L. 95–618, 92 Stat. 3187).

FOR FURTHER INFORMATION CONTACT: Stephen J. Small of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224. Attention: CC:LR:T, 202–566–3287, not a toll-free call.

SUPPLEMENTARY INFORMATION: On November 3, 1976, proposed amendments to the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 48) were published in the Federal Register (41 FR 48346). These amendments were under sections 4054 through 4058, 4216, 4217, and 4221–4227 of the Internal Revenue Code of 1954. The principal purpose of those amendments was to supersede all not previously superseded Manufacturers Excise Tax Regulations issued under the Internal Revenue Code of 1939.

Written comments were received and a public hearing was held on April 22, 1977. Because of continuing discussions between industry, Treasury and Service personnel on section 4216(b), and in order to facilitate the adoption of the rest of the proposed regulations, this separate project was established for the adoption of final regulations under section 4216(b). The remainder of the proposed regulations were adopted by T.D. 7536 and published in the Federal Register on March 31, 1978 (43 FR 13512).

The policy change under consideration at the time the proposed regulations on section 4216(b) were reserved involved an element of the computation of constructive sale price. Under prior law (Rev. Rul. 54–61, 1954–1 C.B. 259; Rev. Rul. 68–519, 1968–2 C.B. 513), the constructive sale price for excise tax purposes on certain retail sales was deemed to be 75 percent of the established retail price, but not less than the manufacturer's actual cost. Various industry representatives had been urging that the cost floor alternative be eliminated and that a higher percentage of the retail price be used. Additionally, revenue agents have also said that the formula was unsatisfactory because examinations of excise taxpayers using this constructive

sale price can turn into exercises in cost accounting.

The pending question of a possible policy change in the regulations was superseded in part by the passage of Pub. L. 95–458, signed on October 14, 1978. The new law requires that constructive sale price for the retail sale of articles taxable under section 4061(a), that is, certain trucks, highway tractors, and trailers, be based on a percentage of the actual retail selling price. Pub. L. 95–458 prohibits the alternate use of the cost floor base. Accordingly, the final regulation includes at § 48.4216(b)–2(c) this new statutory rule for section 4061(a). A number of the written comments raised questions about the computation of constructive sale price and were addressed by the passage of Pub. L. 95–458.

In accordance with the mandate of Pub. L. 95–458, it is the intention of Treasury and the Internal Revenue Service to publish constructive sale price percentages for appropriate industries as the necessary pricing information becomes available. For percentages with respect to truck, truck trailer, and semitrailer chassis and bodies and truck tractors sold at retail, see Rev. Rul. 79–32, 1979–4 I.R.B. 12 and Rev. Rul. 79–33, 1979–4 I.R.B. 12.

The final draft incorporates two additional changes from the proposed regulation. A rule has been deleted from proposed section 48.4216(b)–2(b) dealing with articles that in the ordinary course of trade are not sold by manufacturers to wholesale distributors. As proposed, the rule would have negated, retroactively the prior position of the Service in such situations (see Rev. Rul. 68–519, 1968–2 C.B. 513). Further, with the provisions of Pub. L. 95–458, the deleted rule has no current significance.

Finally, § 48.4216 (b)-2(d)(1), relating to the definition of sales not at arm's length, has been clarified to indicate that where control exists by the nature of the relationship of the parties, it is immaterial whether the control is potential or is exercised. The transactions are deemed to be at less than arm's length.

The regulation will affect only manufacturers who are subject to the Manufacturers and Retailers Excise Tax. The effectiveness of this regulation will be evaluated on the basis of comments received from the public and from the various offices of the Internal Revenue Service responsible for administration of the regulation and collection of the appropriate excise taxes.

Drafting Information

The principal author of this regulation is Stephen J. Small of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. However, personnel from other offices of the Internal Revenue Service and the Treasury Department participated in developing the regulation, both on matters of substance and style.

Adoption of amendments to the regulations

Accordingly, §§ 48.4216(b)-1 through 48.4216(b)-4 of the Manufacturers and Retailers Excise Tax Regulations (26 CFR Part 48), as proposed on November 3, 1976, (41 FR 48346) are hereby adopted, subject to the following changes:

Paragraph 1. Section 48.4216 (b)-2 is amended as follows:

1. Paragraph (a) is revised to read as set forth below.

2. Paragraph (b) is revised to read as set forth below.

3. Paragraphs (c) and (d) are amended by deleting the phrase "or his delegate" wherever it appears.

4. Paragraphs (c) and (d) are redesignated (d) and (e).

5. Clauses (1) and (2) of paragraph (e), as redesignated, are revised to read as set forth below.

6. A new paragraph (c) is inserted, as set forth below.

§ 48.4216(b)-2 Constructive sale price; basic rules.

(a) *In general.* Section 4216(b)(1) sets forth the conditions that require the Secretary to construct a sale price on which to compute a tax imposed under chapter 32 on the price for which an article is sold. The section requires a constructive sale price to be established where a taxable article is (1) sold at retail, (2) sold while on consignment, or (3) sold otherwise than through an arm's-length transaction at less than fair market price. See § 48.4216(b)-2(c) for the treatment of articles taxable under section 4061(a).

(b) *Sales at retail.* Section 4216(b)(1)(A) relates to the determination of a constructive sale price for sales of taxable articles sold at arm's length and at retail. In the case of such sales, the constructive sale price is the highest price for which such articles are sold to wholesale distributors in the ordinary course of trade by manufacturers or producers thereof as determined by the Secretary. If the constructive sale price is less than the actual sale price the constructive sale price shall be used as the tax base. If the constructive sale price is not less than the actual sale price, the actual sale price shall be considered as not less than fair market and shall be used as the tax base. In determining the highest price for which articles are sold by manufacturers to wholesale distributors there must be taken into consideration the normal industry practices with respect to section 4216(a) and (f) inclusions and exclusions. However, once a constructive sale price has been determined by the Secretary, no further adjustment of such price shall be made. The provisions of section 4216(b)(1)(A) and this paragraph shall not apply in those instances where the provisions of section 4216(b)(2) and § 48.4216(b)-3 apply.

(c) *Sales of articles taxable under section 4061(a).* With respect to sales made after December 31, 1978, in the case of an article the sale of which is taxable under section 4061 (a) and which is sold at retail, the tax under this chapter shall be computed on a percentage (as determined by the Secretary but not greater than 100 percent) of the actual selling price based on the highest price for which such articles are sold by manufacturers and producers in the ordinary course of trade. The constructive sale price under this section shall be determined without regard to any individual manufacturer's or producer's cost.

* * * * *

(e) *Sales not at arm's length.* * * *

(1) One of the parties is controlled (in law or in fact) by the other, or there is common control, whether or not such control is actually exercised to influence the sale price, or

(2) The sale is made pursuant to special arrangements between a manufacturer and a purchaser.

* * * * *

Par. 2. Section 48.4216(b)-3 is amended by deleting "to retailers" at the end of the third sentence of paragraph (b)(6).

(Sec. 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; (26 U.S.C. 7805)).)

Jerome Kurtz,
Commissioner of Internal Revenue.

Approved: April 12, 1979.

Donald C. Lubick,
Assistant Secretary of the Treasury

§ 48.4216(b)–1 Constructive sale price; scope and application.

(a) *In general.* Section 4216(b) pertains to those taxes imposed under chapter 32 that are based on the price for which an article is sold, and contains the provisions for constructing a tax base other than the actual sale price of the article, under certain defined conditions.

(b) *Specific applications.* (1) Section 4216(b)(1) applies to—

(i) Arm's-length sales at retail or on consignment, other than those sales at retail and to retailers to which section 4216(b)(2) and § 48.4216(b)–3 apply; and

(ii) Sales otherwise than at arm's length, and at less than fair market price.

(2) Section 4216(b)(2) applies generally to arm's-length sales of an article at retail or to retailers, or both, where the manufacturer also sells the same article to wholesale distributors.

(3) Section 4216(b)(3) provides a formula for determining a constructive sale price for sales of taxable articles between members of an affiliated group of corporations (as "affiliated group" is defined in section 1504(a)) in those instances where the purchasing corporation regularly resells to retailers but does not regularly resell to wholesale distributors, and except for situations where section 4216(b) (4) or (5) applies.

(4) Section 4216(b)(4) provides a special method for computing a constructive sale price for sales of taxable articles between affiliated corporations where the purchasing corporation sells only to retailers, and the normal method of selling within the industry is for manufacturers to sell to wholesale distributors.

(5) Section 4216(b)(5) provides a special method for computing a constructive sale price for sales of articles subject to a tax imposed by section 4061(a) (trucks, buses, tractors, etc.) between affiliated corporations, where the purchasing corporation regularly sells such articles in arm's-length transactions to independent retailers.

(c) *Definitions.* For purposes of section 4216(b) and the regulations thereunder and unless otherwise indicated—

(1) *Sale at retail.* A "sale at retail," or a "retail sale", is a sale of an article to a purchaser who intends to use or lease the article rather than resell it. The fact that articles are sold in wholesale lots, or at wholesale prices, will not change the character of such sales as "sales at retail" if the purchaser is not engaged in the business of reselling such articles, and acquires them for the purpose of using them rather than reselling them.

(2) *Retail dealers.* A "retail dealer", or "retailer", is a person engaged in the business of selling articles at retail.

(3) *Wholesale distributor.* The term "wholesale distributor" means a person engaged in the business of selling articles to persons engaged in the business of reselling such articles.

§ 48.4216(b)–2 Constructive sale price; basic rules.

(a) *In general.* Section 4216(b)(1) sets forth the conditions that require the Secretary to construct a sale price on which to compute a tax imposed under chapter 32 on the price for which an article is sold. The section requires a constructive sale price to be established where a taxable article is (1) sold at retail, (2) sold while on consignment, or (3) sold otherwise than through an arm's-length transaction at less than fair market price. See § 48.4216 (b)–2 (c) for the treatment of articles taxable under section 4061(a).

(b) *Sales at retail.* Section 4216(b)(1)(A) relates to the determination of a constructive sale price for sales of taxable articles sold at arm's length and at retail. In the case of such sales, the constructive sale price is the highest price for which such articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary. If the constructive sale price is less than the actual sale price, the constructive sale price shall be used as the tax base. If the constructive sale price is not less than the actual sale price, the actual sale price shall be considered as not less than fair market, and shall be used as the tax base. In determining the highest price for which articles are sold by manufacturers to wholesale distributors, or the lowest price for which articles are sold by manufacturers to retail dealers, there must be taken into consideration the normal industry practices with respect to section 4216 (a) and (f) inclusions and exclusions. However, once a constructive sale price has been determined by the Secretary or his delegate, no further adjustment of such price shall be made. The provisions of section 4216(b)(1)(A) and this paragraph shall not apply in those instances where the provisions of section 4216(b)(2) and § 48.4216(b)–3 apply.

(c) *Sales of articles taxable under section 4061(a).* With respect to sales made after December 31, 1978, in the case of an article the sale of which is taxable under section 4061(a) and which is sold at retail, the tax under this chapter shall be computed on a percentage (as determined by the Secretary but not greater than 100 percent) of the actual selling price based on the highest price for which such articles are sold by manufacturers and producers in the ordinary course of trade. The constructive sale price under this section shall be determined without regard to any individual manufacturer's or producer's cost.

(d) *Sales on consignment.* As in the case of sales at retail, the constructive sale price for sales on consignment shall be the price for which such articles are sold, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary or his delegate. For purposes of section 4216(b)(1)(B) and this paragraph, an article is considered to be sold on consignment if it is sold while it is on consignment to a person which has the right to sell, and does sell, such article in its own name, but never receives title to the article from the manufacturer. Ordinarily, the constructive sale price of an article sold on consignment is the net price received by the manufacturer from the consignee. The provisions of section 4216(b)(1)(B) and this paragraph shall not apply if the provisions of section 4216(b)(2) and § 48.4216(b)–3 apply.

(e) *Sales not at arm's length.* For purposes of section 4216(b)(1)(C) and this paragraph, a sale is considered to be made under circumstances otherwise than at "arm's length" if—

(1) One of the parties is controlled (in law or in fact) by the other, or there is common control, whether or not such control is actually exercised to influence the sale price, or

(2) The sale is made pursuant to special arrangements between a manufacturer and a purchaser.

In the case of an article sold otherwise than at arm's length, and at less than fair market price, the constructive sale price shall be the price for which such articles are sold, in the ordinary course of trade, by manufacturers or producers thereof, as determined by the Secretary. Once such a constructive sale price has been determined, no further adjustment of such price shall be made. See sections 4216(b) (3), (4), and (5), and § 48.4216 (b)–4, for specific methods for determining constructive sale prices for intercompany sales under certain defined conditions.

§ 48.4216(b)–3 Constructive sale price; special rule for arm's-length sales.

(a) *In general.* Section 4216 (b)(2) provides a special rule under which a manufacturer shall determine a constructive sale price for his sales of taxable articles at retail, and to retail dealers, under certain conditions. The rule is applicable where—

(1) The manufacturer regularly sells such articles at retail, or to retailers, or both, as the case may be,

(2) The manufacturer also regularly sells such articles to one or more wholesale distributors in arm's-length transactions, and the manufacturer establishes that its prices in such cases are determined without regard to any benefit to be derived under section 4216(b)(2),

(3) The transactions are arm's-length transactions, and

(4) With respect to articles to which the tax imposed by section 4061(a) applies (relating to trucks, buses, tractors, etc.), the normal method of sales for such articles within the industry is not to sell such articles at retail or to retailers, or combinations thereof.

A manufacturer meeting the foregoing requirements shall base its tax liability for sales at retail and sales to retailers on the lower of its actual sale price or the highest price for which it sells the same articles under the same conditions to wholesale distributors.

(b) *Definitions.* For purposes of section 4216(b)(2) and this section—

(1) *Actual sale price.* "Actual sale price" means the actual selling price of an article determined in the same manner as sale price is determined for a taxable sale. Accordingly, such price must reflect the inclusions and exclusions set forth in sections 4216 (a) and (f), and any price adjustments described in section 6416(b)(1).

(2) *Highest price to wholesale distributors.* The "highest price" charged wholesale distributors for an article by a manufacturer, producer, or importer thereof, is the highest price at which the manufacturer, producer, or importer sells the article to wholesale distributors, determined without regard to quantity. Such price shall be determined in the same manner as sale price is determined for a taxable sale with respect to sections 4216 (a) and (f) inclusions and exclusions; however, since the price is to be a "highest" price, no further adjustment may be made for price readjustments under section 6416(b)(1).

(3) *Regular sales.* An article is considered to sold "regularly" at retail or to retailers if sales are made at retail or to retailers periodically and recurringly as a regular part of the seller's business. If a seller makes only isolated or casual sales of an article at retail or to retailers, it is not considered to be selling "regularly" at retail or to retailers. Similarly, a manufacturer is considered to be making regular sales for an article to one or more distributors if it sells the article to at least one distributor periodically and recurringly as a regular part of its business.

(4) *Normal method of sales in industry.* In the absence of a showing to the Commissioner of Internal Revenue of a more appropriate manner of determining the normal method of sales within an industry which is practical in application, the normal method of sales within an industry shall be regarded as not being at retail or to retailers, or both, if the industry dollar volume of sales which are at retail or to retailers, or both, is less than half the total industry dollar volume of sales at all levels of distribution by manufacturers, producers, or importers, including sales to other manufacturers, producers, or importers.

(5) *Industry* Each of the following categories of articles upon which tax is imposed by section 4061(a) constitutes a separate "industry"—

(i) Taxable automobile trucks (consisting of automobile truck bodies and chassis);

(ii) Taxable automobile buses (consisting of automobile bus bodies and chassis);

(iii) Taxable truck and bus trailers and semitrailers (consisting of chassis and bodies of such trailers and semitrailers); and

(iv) Taxable tractors of the kind chiefly used for highway transportation in combination with a trailer or semitrailer.

(6) *Application of section 4216(b)(2) to certain sales before June 22, 1965.* In the case of sales before June 22, 1965, of articles then taxable under section 4121 (relating to electric, gas, and oil appliances), section 4216(b)(2) also applied in the case of a sale of such an article to a special dealer. The applicability of section 4216(b)(2) to such a sale may be determined by inserting "or to a special dealer" following "or to a retailer" in so much of section 4216(b)(2) as precedes subparagraph (A); by inserting "or to special dealers" following "retailers" in section 4216(b)(2)(A); and by inserting "(other than special dealers)" after "wholesale distributors" in section 4216(b)(2)(B) and so much of section 4216(b)(2) as follows section 4216(b)(2)(D). A "special dealer" was a distributor of articles taxable under section 4121 who did not maintain a sales force to resell the article whose constructive sale price was established under section 4216(b)(2) but relied on salesmen of the manufacturer, producer, or importer of the article. In the case of sales before June 22, 1965, of articles taxable under section 4191 (relating to business machines) or section 4211 (relating to matches), section 4216(b)(2) was applicable in the same manner as in the case of articles taxable under section 4061(a). With respect to sales after September 30, 1972, section 4216(b)(2)(C) applied only to articles taxable under section 4061(a), 4191, or 4211. Section 4216(b)(2)(C) was applicable to sales before October 1, 1962, of all articles subject to tax under Chapter 32.

§ 48.4216(b)-4 Constructive sale price; affiliated corporations.

(a) *In general.* Sections 4216(b) (3), (4), and (5) establish procedures for determining a constructive sale price under section 4216(b)(1)(C) for sales between corporations that are members of the same "affiliated group", as that term is defined in section 1504(a).

(b) *Sales to which section 4216(b)(3) applies.* Section 4216(b)(3), which applies to articles sold after December 31, 1969, provides a procedure for determining a constructive sale price under section 4216(b)(1)(C) in those instances where—

(1) A manufacturer, producer or importer regularly sells a taxable article (other than an article subject to a tax imposed by section 4061(a) (trucks, buses, etc.)) to a wholesale distributor which is a member of the same affiliated group as the manufacturer, producer or importer, and

(2) The wholesale distributor regularly sells such article to one or more independent retailers, but does not regularly sell to wholesale distributors.

Under such circumstances the constructive sale price for the article shall be an amount equal to 90 percent of the lowest price for which the distributor regularly sells the article in arm's-length transactions to such independent retailers. Once the constructive sale price has been determined, no adjustment shall be made for sections 4216 (a) and (f) inclusions or exclusions or section 6416(b)(1) price readjustments. If both section 4216(b)(3) and section 4216(b)(4) apply with respect to the sale of an article, the constructive sale price for such article shall be the lower of the prices computed under section 4216(b)(3) and section 4216(b)(4).

(c) *Sales to which section 4216(b)(4) applies.* Section 4216(b)(4), which applies to articles sold after December 31, 1969, provides a procedure for determining a constructive sale price under section 4216(b)(1)(C) in those instances where—

(1) A manufacturer, producer, or importer regularly sells (except for tax-free sales) a taxable article only to a wholesale distributor which is a member of the same affiliated group as the manufacturer, producer, or importer,

(2) The distributor regularly sells (except for tax-free sales) such article only to retail dealers, and

(3) The normal method of sales for such articles within the industry is to sell such articles in arm's-length transactions to wholesale distributors.

Section 4216(b)(4) applies with respect to articles taxable under section 4061(a) (relating to trucks, buses, etc.) only as to sales after December 31, 1969, and before January 1, 1971. Under section 4216(b)(4), the constructive sale price of such article shall be the median price at which the distributor, at the time of the

sale by the manufacturer, resells the article to retail dealers, reduced by a percentage of such price equal to the percentage which—

(i) The difference between the median price for which comparable articles are sold to wholesale distributors, in the ordinary course of trade, by manufacturers of producers thereof, and the median price at which such wholesale distributors in arm's-length transactions sell such comparable articles to retailers, is of . .

(ii) The median price at which such wholesale distributors in arm's-length transactions sell such comparable articles to retailers.

For purposes of this paragraph, the "median price" for which an article is sold at a particular level of distribution is the price midway between the highest and lowest prices charged vendees at the particular level of distribution. Where only one price is charged at a level of distribution, "median price" is equivalent to "actual price". All sale prices referred to in paragraphs (b), (c), (d), and (e) of this section are prices that must reflect the inclusions and exclusions set forth in sections 4216(a) and (f). However, once a constructive sale price has been determined under these paragraphs, no further adjustment of such price is allowed.

(d) *Application of section 4216(b)(4).* The application of section 4216(b)(4) and paragraph (c) of this section may be illustrated by the following example:

Example. M, a corporation engaged in the manufacture of article *X,* sold 100 of such articles at $10.00 per article to a wholesale distributor *N,* a corporation engaged in the business of selling *X* articles to independent retail dealers. *N* is a member of the same affiliated group of corporations as *M. M* sells *X* articles only to *N.* The normal method of manufacturers' sales of *X* articles in the industry is to sell to independent wholesale distributors. *N* corporation sells *X* articles to retailers for $15.00 each. The price for which comparable *X* articles are sold to wholesale distributors in the ordinary course of trade by manufacturers thereof is $12.00 per article. Wholesale distributors sell *X* articles to retailers in the ordinary course of trade for $16.00 per article. Under the foregoing facts the constructive sale price determined under section 4216(b)(4) and this paragraph is $11.25, computed as follows:

$$\text{Constructive sale price} = \$15.00 \text{ minus } \left[\$15.00 \times \frac{(\$16.00 - \$12.00)}{\$16.00}\right] = \$11.25$$

(e) *Sales to which section 4216(b)(5) applies.* Section 4216(b)(5), which applies to articles sold after December 31, 1970, provides a procedure for determining a constructive sale price under section 4216(b)(1)(C) in those circumstances where—

(1) A manufacturer, producer, or importer of an article subject to a tax imposed by section 4061(a) (trucks, buses, etc.) regularly sells such article to a wholesale distributor that is a member of the same affiliated group of corporations as the manufacturer, producer, or importer, and

(2) Such distributor regularly sells such articles to independent retail dealers.

Under such circumstances the constructive sale price of such articles shall be 98½ percent of the lowest price for which such distributor regularly sells the article in arms's-length transactions to the independent retail dealers. Once the constructive sale price has been determined, no adjustment shall be made for section 4216 (a) and (f) inclusions or exclusions or section 6416(b)(1) price readjustments.

(f) *Determination of "lowest price".* (1) In addition to other considerations, in determining a "lowest price" for purposes of section 4216(b) (1), (3), and (5) and §§ 48.4216(b)–2(b), 48.4216(b)–4 (b), and 48.4216(b)–4(e), such price shall be determined—

(i) Without requiring that a given percentage of sales be made at that price (provided that the volume of sales made at that price is great enough to indicate that those sales have not been engaged in primarily to establish a lower tax base), and

(ii) Without including any charge for a fixed amount that the purchaser has an unconditional right to recover on the basis of a contractual arrangement existing at the time of sale.

(2) For purposes of applying section 4216(b)(1) and § 48.4216(b)–2, section 4216(b)(6) and this paragraph apply to articles sold after June 30, 1962. For purposes of applying section 4216(b)(3) and paragraph (b) of this section, section 4216(b)(6) and this paragraph apply to articles sold after December 31, 1969. For purposes of applying section 4216(b)(5) and paragraph (e) of this section, section 4216(b)(6) and this paragraph apply to articles sold after December 31, 1970.

(g) *Definitions.* For purposes of this section and paragraphs (3), (4), and (5) of section 4216(b), the term "regularly sells" has the same meaning as that accorded the term "regular sales" in subparagraph (3) of § 48.4216(b)–3(b), and the term "normal method of sales in the industry" has the same meaning as accorded that term in subparagraph (4) of § 48.4216(b)–3(b).

[T.D. 7613]

[FR Doc. 79-12512 Filed 4-20-79; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

Malden River, Mass.; Drawbridge Operation Regulations

AGENCY: Coast Guard, DOT.

ACTION: Correction.

SUMMARY: In FR Doc. 79–7957 appearing on page 15702 in the Federal Register of Thursday, March 15, 1979, in § 117.75, paragraph "(m)" should be designated as paragraph "(n)". Paragraph "(m)" has already been used in FR Doc. 78–7762 appearing on page 11983 in the Federal Register of Thursday, March 23, 1978.

EFFECTIVE DATE: April 23, 1979.

FOR FURTHER INFORMATION CONTACT: Frank L. Teuton, Jr., Chief, Drawbridge Regulations Branch (G–WBR/73), Room 7300, Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590 (202–426–0942).

Dated: April 13, 1979.

J. B. Hayes,
Admiral, U.S. Coast Guard, Commandant.

(CCD 77-215)

[FR Doc. 79-12554 Filed 4-20-79; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 165

Safety Zones; Illinois River, Mile 0 to 187.3

AGENCY: Coast Guard, DOT.

ACTION: Final Rule (Safety Zone—Termination).

SUMMARY: This amendment to the Coast Guard's Safety Zone Regulations terminates the safety zone on the Illinois River, Mile 0 to Mile 187.3 (published in the April 5, 1979 issue of the Federal Register (44 FR 30536)). This safety zone is terminated as flood conditions requiring the safety zone have abated.

DATES: This amendment is effective on April 12, 1979.

FOR FURTHER INFORMATION CONTACT: Cdr. A. Cattalini, USCG, c/o Commander Second Coast Guard District, 1430 Olive Street, St. Louis, Mo. 63103, Tel: 314–425–4614.

DRAFTING INFORMATION: The principal persons involved in the drafting of this rule are Lt. G. W. Abrams, USCG,

Project Officer, c/o Marine Safety Office, 210 N. 12th Street, St. Louis, Mo. 63101, Tel: 314–425–4657, and Lt. D. R. Innis, USCG, Project Attorney, c/o Commander, Second Coast Guard District, 1430 Olive Street, St. Louis, Mo. 63103, Tel: 314–425–4614. In consideration of the above, Part 165 of Title 33 of the Code of Federal Regulations is amended by deleting § 165.204.

Authority: (86 Stat. 427 (33 U.S.C. 1224), as amended by Pub. L. 95–474, 92 Stat. 1475; 49 CFR 1.46(n)(4)).

Dated: April 12, 1979.

A. E. Tanos,

Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Mo.

[CGD2–79–2–R2]

[FR Doc. 79–12522 Filed 4–20–79; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 955

Adoption of Rules Providing for Optional Small Claims Expedited and Accelerated Procedures and Rules for Subpoenas

Correction

In FR Doc. 79–7153, appearing at page 13013 in the issue for Friday, March 9, 1979 and inaccurately corrected at page 16015 in the issue for Friday, March 16, 1979, the word "appeals," in the tenth line of § 955.36(b)(1) on page 13014 should read "appear".

BILLING CODE 1505–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Hawaii State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final Rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve a change to the Hawaii State Implementation Plan (SIP) submitted by the Governor. The intended effect of this action is to update rules and regulations in the SIP.

EFFECTIVE DATE: May 14, 1979.

FOR FURTHER INFORMATION CONTACT: Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105, Attn.: Douglas Grano, (415) 556–2938.

SUPPLEMENTARY INFORMATION: On February 7, 1979 (44 FR 7780), EPA published a Notice of Proposed Rulemaking for a revision to the Hawaii Public Health Regulations submitted on September 12, 1978 by the Governor for inclusion in the Hawaii SIP. The Notice of Proposed Rulemaking provided for a 30-day comment period. No comments were received.

Under Section 110 of the Clean Air Act as amended and 40 CFR Part 51, the Administrator is required to approve or disapprove regulations submitted as SIP revisions.

This revision contains a variance from Chapter 43, Section 7(b)(5) of the Hawaii Public Health Regulations. The variance allows fires to be set in order to train crashcrews in the technique of fighting aircraft fires. The State of Hawaii has submitted an analysis which demonstrates that such burning would not interfere with the attainment and maintenance of the National Ambient Air Quality Standards.

It is the purpose of this notice to approve the variance from Chapter 43, Section 7(b)(5) of the Hawaii Public Health Regulations and incorporate it into the Hawaii SIP.

The State of Hawaii has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

Authority: Sections 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. §§ 7410 and 7601(a)).

Dated: April 12, 1979.

Douglas M. Costle,

Administrator.

Subpart M of Part 52 of Chapter I, Title 40, of the Code of Federal Regulations is amended as follows:

Subpart M—Hawaii

1. Section 52.620 is amended by adding paragraph (c)(10) as follows:

§ 52.620 Identification of plan.

* * * * *

(c) * * *

(10) A variance to the Hawaii Public Health Regulations, Chapter 43, Section 7(b)(5) submitted on September 12, 1978 by the Governor.

* * * * * *

[FRL 1202–1]

[FR Doc. 79–12400 Filed 4–20–79; 8:45 am]

BILLING CODE 6560–01–M

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Approval of Revision of the Commonwealth of Pennsylvania State Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: This notice announces the Administrator's approval of an amendment to the Commonwealth of Pennsylvania's air pollution control regulations as a revision to the Plan submitted by the Commonwealth of Pennsylvania. The amendment provides for improved administrative procedures, creates a stationary air contamination source permit system, provides additional remedies for abating air pollution, defines the relationship between the Clean Air Act and local ordinances, and imposes penalties for violation of the Act.

EFFECTIVE DATE: Immediately upon publication of this notice.

ADDRESSES: Copies of the amended regulations and associated support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, Tenth Floor, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, Attn.: Patricia Sheridan.

Pennsylvania Bureau of Air Pollution Control, Fulton Building, 18th Floor, 200 North Third Street, Harrisburg, Pennsylvania 17120.

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Patricia Sheridan, U.S. Environmental Protection Agency, Region III, Curtis Building, Tenth Floor, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597–8176.

SUPPLEMENTARY INFORMATION:

I. Background

On December 11, 1972, the Commonwealth of Pennsylvania submitted an amendment to the State Implementation Plan pertaining to miscellaneous non-regulatory revisions. Inadvertently, the Administrator had never formally approved this amendment as a revision. However, the March 2, 1976 Notice of Rulemaking (41 FR 8956) erroneously listed this

amendment as part of the State Implementation Plan under 40 CFR Paragraph 52.2020[c][10]. The erroneous entry was subsequently rescinded on December 6, 1976 [41 FR 53326].

Included in the proposed amendment are regulations for the powers and duties of the Department of Environmental Resources, the Environmental Quality Board, and the Environmental Hearing Board. Also included are regulations governing permits, disposition of fines, civil remedies, powers reserved to political subdivisions, construction, and variances. The Environmental Protection Agency's initial evaluation determined that the revision is approvable provided that the granting of the variance is consistent with 40 CFR Part 51.

The Regional Administrator invited comments in the notice published in the Federal Register on January 13, 1978 [43 FR 1967]. A 30-day public comment period was provided.

II. Public Comments

No comments were received during the 30-day public comment period.

III. EPA's Evaluation

The amendment submitted by the Commonwealth of Pennsylvania meets the criteria for Section 110(a)(2)(A)–(H) of the Clean Air Act and 40 CFR Part 51.4, Public Hearings; § 51.5, Submittal of Plans; preliminary review of plans; § 51.6, Revisions; and § 51.11, Legal Authority.

IV. Final Action

In view of this evaluation, the Administrator approves the above-described amendment pertaining to miscellaneous non-regulatory revisions. This amendment provides for improved administrative procedures, creates a stationary air contamination source permit system, provides additional remedies for abating air pollution, defines the relationship between the Clean Air Act and local ordinances, and imposes penalties for violations of the Act.

Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Authority: 42 U.S.C. 7401.

Dated: April 13, 1979.

Douglas M. Costle,
Administrator.

Part 52 of Title 40, Code of Federal Regulations is amended as follows:

Subpart NN—Pennsylvania

1. In Section 52.2020 Identification of Plan.

* * * * *

(c) The plan revisions listed below were submitted on the date specified

* * *

(16) revisions submitted by the Commonwealth of Pennsylvania on December 11, 1972 amending regulations for the powers and duties of the Department of Environmental Resources, the Environmental Quality Board and the Environmental Hearing Board.

* * * * *

[FRL 1203-2]
[FR Doc. 79-12401 Filed 4-20-79; 8:45 am]
BILLING CODE 6560-01-M

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40 CFR Part 65

Duke Power Co., Belews Creek Steam Station; Approval of a Delayed Compliance Order Issued by North Carolina Environmental Management Commission

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the North Carolina Environmental Management Commission to Duke Power Co., Belews Creek Steam Station. The Order requires Duke Power Company to bring air emissions from its Belews Creek, Unit No. 2 at Walnut Cove, North Carolina, into compliance with 15 NCAC 2D .0503 and .0521 air pollution control regulations contained in the federally approved North Carolina State Implementation Plan (SIP). Because of the Administrator's approval, Duke Power Company's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on April 23, 1979.

FOR FURTHER INFORMATION CONTACT: Floyd Ledbetter, Air Enforcement Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308, Telephone Number: (404) 881-4298.

ADDRESSES: A copy of the State Delayed Compliance Order, any supporting material, and any comments received in response to a prior Federal Register notice proposing approval of the Order are available for public inspection and copying during normal business hours at: U.S. Environmental Protection Agency, Region IV, Air Enforcement Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30308.

SUPPLEMENTARY INFORMATION: On January 23, 1979, the Regional Administrator of EPA's Region IV Office published in the Federal Register, Vol. 44, No. 16, p. 4736, a notice proposing approval of a delayed compliance order issued by the North Carolina Environmental Management Commission to Duke Power Company, Belews Creek Steam Station. The notice asked for public comments by February 22, 1979, on EPA's proposed approval of the Order. No public comments were received in response to the proposal notice.

Therefore, the delayed compliance order issued to Duke Power Company is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Duke Power Co., Belews Creek Steam Station on a schedule to bring its Unit No. 2 into compliance as expeditiously as practicable with 15 NCAC 2D .0503 and .0521, part of the federally approved North Carolina State Implementation Plan. The Order also imposes an interim particulate emission limit of 1.0 pounds per million BTU and an interim visible emission limit not to exceed 60% opacity averaged over any six hour period. If the conditions of the Order are met, it will permit Duke Power Co., Belews Creek Unit 2, to delay compliance with the SIP regulations covered by the Order until July 1, 1979. The facility is unable to comply immediately with these regulations.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the immediate need to place Duke Power Co., Belews Creek Unit 2, on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) in the North Carolina State Implementation Plan.

Authority: 42 U.S.C. 7413(d), 7601.

Dated: April 4, 1979.

Douglas M. Costle,
Administrator

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of

Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in § 65.381:

§ 65.381 EPA approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order Number	SIP regulation(s) involved	Date of FR proposal	Final compliance date
*	*	*	*	*	*
Duke Power Co., Belews Creek Steam Station Unit 2.	Walnut Cove, NC.....	DCO-78-54.....	.0503 .0521	Jan. 23, 1979....	July 1, 1979.
*	*	*	*	*	*

* * * * *

[FRL 1093-1]
[FR Doc. 79-12447 Filed 4-20-79; 8:45 am]
BILLING CODE 6560-01-M

40 CFR Part 65

Columbus Forest Industries; Approval of a Delayed Compliance Order Issued by the North Carolina Environmental Management Commission

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the North Carolina Environmental Management Commission to Columbus Forest Industries. The Order requires the Columbus Forest Industries to bring air emissions from its wood waste boiler at Riegelwood, North Carolina, into compliance with North Carolina air pollution control regulations contained in the federally approved North Carolina State Implementation Plan (SIP). Because of the Administrator's approval, Columbus Forest Industries compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATE: This rule takes effect on April 23, 1979.

FOR FURTHER INFORMATION CONTACT: Floyd Ledbetter, Air Enforcement Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street N.E., Atlanta, Georgia 30308, Telephone Number: (404) 881-4298.

ADDRESS: A copy of the State Delayed Compliance Order, any supporting material, and any comments received in response to a prior Federal Register notice proposing approval of the Order are available for public inspection and copying during normal business hours at: U.S. Environmental Protection Agency, Region IV, Air Enforcement Branch, 345 Courtland Street N.E., Atlanta, Georgia 30308.

SUPPLEMENTARY INFORMATION: On January 23, 1979, the Regional Administrator of EPA's Region IV Office published in the Federal Register, Vol. 44, No. 16, pg 4735, a notice proposing approval of a delayed compliance order issued by the North Carolina Environmental Management Commission to Columbus Forest Industries. The notice asked for public comments by February 22, 1979, on EPA's proposed approval of the Order. No public comments were received in response to the proposal notice.

Therefore, the delayed compliance order issued to Columbus Forest Industries is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Columbus Forest Industries on a schedule to bring its wood waste boiler into compliance as expeditiously as practicable with 15 NCAC 2D .0504, part of the federally approved North Carolina State Implementation Plan. The Order also imposes interim particulate emissions of 0.89 pounds/million BTU and a visible emission of 20% opacity.

If the conditions of the Order are met, it will permit Columbus Forest Industries to delay compliance with the SIP regulations covered by the Order until June 30, 1979. The facility is unable to comply immediately with these regulations.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the immediate need to place Columbus Forest Industries on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) in the North Carolina State Implementation Plan.

Authority: 42 U.S.C. 7413(d), 7601.

Dated: April 4, 1979.

Douglas M. Costle,
Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in § 65.381:

§ 65.381 EPA approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order Number	SIP regulation(s) involved	Date of FR proposal	Final compliance date
*	*	*	*	*	*
Columbus Forest Industries....	Riegelwood, N.C.....	DCO-78-44.....	.0504	Jan. 23, 1979....	June 30, 1979
*	*	*	*	*	*

* * * * *

[FRL 1092-6]
[FR Doc. 79-12448 Filed 4-20-79; 8:45 am]
BILLING CODE 6560-01-M

40 CFR Part 65

E. J. Snyder & Co., Inc.; Approval of a Delayed Compliance Order Issued by the North Carolina Environmental Management Commission

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the North Carolina Environmental Management Commission to E. J. Snyder and Company, Inc. The Order requires E. J. Snyder and Company, Inc., to bring air emissions from its two Fabcon tenter frames in Complex B at Albemarle, North Carolina, into compliance with 15 NCAC 2D .0521 air pollution control regulations contained in the federally approved North Carolina State Implementation Plan (SIP). Because of the Administrator's approval, E. J. Snyder and Company, Inc., compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATE: This rule takes effect on April 23, 1979.

FOR FURTHER INFORMATION CONTACT: Floyd Ledbetter, Air Enforcement Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308, Telephone Number: (404) 881–4298.

ADDRESS: A copy of the State Delayed Compliance Order, any supporting material, and any comments received in response to a prior Federal Register notice proposing approval of the Order are available for public inspection and copying during normal business hours at: U.S. Environmental Protection Agency, Region IV, Air Enforcement Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30308.

SUPPLEMENTARY INFORMATION: On January 17, 1979, the Regional Administrator of EPA's Region IV Office published in the Federal Register, Vol. 44, No. 12, pg 3527, a notice proposing approval of a delayed compliance order issued by the North Carolina Environmental Management Commission to E. J. Snyder and Company, Inc. The notice asked for public comments by February 16, 1979, on EPA's proposed approval of the Order. No public comments were received in response to the proposal notice.

Therefore, the delayed compliance order issued to E. J. Snyder and Company, Inc., is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places E. J. Snyder and Company, Inc., on a schedule to bring its two Fabcon tenter frames in Complex B into compliance as expeditiously as practicable with 15 NCAC 2D .0521, part of the federally approved North Carolina State Implementation Plan. The Order also imposes interim visible emission limits of 60% opacity averaged over any one hour period.

If the conditions of the Order are met, it will permit E. J. Snyder and Company, Inc., to delay compliance with the SIP regulations covered by the Order until April 1, 1979. The facility is unable to comply immediately with these regulations.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the immediate need to place E. J. Snyder and Company, Inc., on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) in the North Carolina State Implementation Plan.

Authority: 42 U.S.C. 7413(d), 7601.

Dated: April 4, 1979.

Douglas M. Costle,
Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in § 65.381:

§ 65.381 EPA approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order Number	SIP regulation(s) involved	Date of FR proposal	Final compliance date
*	*	*	*	*	*
E. J. Snyder and Co., Inc	Albemarle, N.C	DCO-78-46	.0521	Jan. 17, 1979	April 1, 1979.
*	*	*	*	*	*

* * * * *

[FRL 1092-8]

[FR Doc. 79-12449 Filed 4-20-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 65

Westvaco Corp.; Approval of a Delayed Compliance Order Issued by the South Carolina Department of Health and Environmental Control, North Charleston, S.C.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the South Carolina Department of Health and Environmental Control to Westvaco Corporation, North Charleston, S.C. The Order requires the company to bring air emissions from its lime kilns numbered 1, 2, and 3 and recovery furnaces numbered 6, 7, and 8 at North Charleston, South Carolina, into compliance with applicable air pollution control regulations contained in the federally approved South Carolina State Implementation Plan (SIP). Because of the Administrator's approval, Westvaco Corporation's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATE: This rule takes effect on April 23, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Bert Cole, Air Enforcement Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308, Telephone Number: (404) 881–4298.

ADDRESS: A copy of the State Delayed Compliance Order, any supporting material, and any comments received in response to a prior Federal Register notice proposing approval of the Order are available for public inspection and copying during normal business hours at: U.S. Environmental Protection Agency, Region IV, Air Enforcement Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30308.

SUPPLEMENTARY INFORMATION: On January 31, 1979, the Regional Administrator of EPA's Region IV Office published in the Federal Register, 44 FR 6154, a notice proposing approval of a delayed compliance order issued by the South Carolina Department of Health and Environmental Control to Westvaco corporation, North Charleston, S.C. The notice asked for public comments by March 2, 1979, on EPA's proposed approval of the Order. No public comments were received in response to the proposal notice.

Therefore, the delayed compliance order issued to Westvaco Corporation is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The order places Westvaco Corporation on a schedule to bring its lime kilns numbered 1, 2, and 3 and recovery furnaces numbered 6, 7, and 8 into compliance as expeditiously as practicable with South Carolina Air Pollution Regulation 62.6, Standard No. 5, Section II, part of the federally approved South Carolina State Implementation Plan. The Order also imposes interim requirements which meet Sections 113(d)(1)(c) and 113(d)(7) of the Act, and emission monitoring and reporting requirements.

If the conditions of the Order are met, it will permit Westvaco Corporation to delay compliance with the SIP regulations covered by the Order until June 15, 1979. The facility is unable to comply immediately with these regulations.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the immediate need to place Westvaco Corporation on a schedule which is effective under the Clean air Act for compliance with the applicable requirement(s) in the South Carolina State Implementation Plan.

Authority: 42 U.S.C. 7413(d), 7601.

Dated: April 2, 1979.

Douglas M. Costle,

Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in § 65.451:

§ 65.451 EPA approval of State delayed compliance orders issued to major stationary sources

* * * * *

Source	Location	Order Number	SIP regulation(s) involved	Date of FR proposal	Final compliance date
* *	*	*	*	*	*
Westvaco Corporation	North Charleston, S.C.	DCO-78-40	62.6, Standard No. 5, Section II.	Jan. 31, 1979	June 15, 1979.
* *	*	*	*	*	*

[FRL 1089-8]

[FR Doc. 79-12442 Filed 4-20-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 65

Knoxville Iron Co.; Approval of a Delayed Compliance Order Issued by the Department of Air Pollution Control, Knox County, Tenn.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the Department of Air Pollution Control, Knox County, Tenn., to Knoxville Iron Co. The Order requires the Knoxville Iron Co. to bring air emissions from its gray iron foundry at Knoxville, Tenn., into compliance with the Knox County air pollution control regulations contained in the federally approved Tennessee State Implementation Plan (SIP). Because of the Administrator's approval, Knoxville Iron Co.'s compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the order during the period the Order is in effect.

DATE: This rule takes effect on April 23, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Bert Cole, Air Enforcement Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308, telephone No. (404) 881-4298.

ADDRESS: A copy of the Local Delayed Compliance Order, any supporting material, and any comments received in response to a prior Federal Register notice proposing approval of the order are available for public inspection and copying during normal business hours at: U.S. Environmental Protection Agency, Region IV, Air Enforcement Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30308.

SUPPLEMENTARY INFORMATION: On December 5, 1978, the Regional Administrator of EPA's Region IV Office published in the Federal Register, 43 FR 56913, a notice proposing approval of a delayed compliance order issued by the Department of Air Pollution Control, Knox County, Tenn., to Knoxville Iron Co., Knoxville, Tenn. The notice asked for public comments by January 4, 1979, on EPA's proposed approval of the Order. No public comments were received in response to the proposal notice.

Therefore, the delayed compliance order issued to Knoxville Iron Co. is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Knoxville Iron Co. on a schedule to bring its gray iron foundry into compliance as expeditiously as practicable with the Knox County Air Pollution Control Regulations, part of the federally approved Tennessee State Implementation Plan. The Order also imposes interim requirements which meet Sections 113(d)(1)(c) and 113(d)(7) of the Act, and emission monitoring and reporting requirements.

If the conditions of the Order are met, it will permit Knoxville Iron Co. to delay compliance with the SIP regulations covered by the Order until May 1, 1979.

The facility is unable to comply immediately with these regulations.

EPA has determined that its approval of the order shall be effective upon publication of this notice because of the immediate need to place Knoxville Iron Co. on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) in the Tennessee State Implementation Plan.

Authority: 42 U.S.C. 7413(d), 7601.

Dated: April 10, 1979.

Douglas M. Costle,
Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in § 65.471:

§ 65.471 EPA Approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order Number	SIP regulation(s) involved	Date of FR proposal	Final compliance date
*	*	*	*	*	*
Knoxville Iron Co.	Knoxville, Tenn.	DCO-78-34	§§ 17.0, 19.0, and 22.0 Knox County Air Pollution Control Regs.	Dec. 5, 1978	May 1, 1979.
*	*	*	*	*	*

* * * * *

[FRL 1098-2]

[FR Doc. 79-12443 Filed 4-20-79; 8:45 am]

BILLING CODE 6560-01-M

Alabama Kraft Co.; Approval of a Delayed Compliance Order Issued by the Alabama Air Pollution Control Commission

40 CFR Part 65

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the Alabama Air Pollution Control Commission to the Alabama Kraft Company. The Order requires the Alabama Kraft Company to bring air emissions from its wood waste boiler at Cottonton, Alabama, into compliance with air pollution control regulations contained in the federally approved Alabama State Implementation Plan (SIP). Because of the Administrator's approval, Alabama Kraft Company's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisons of the Clean Air Act for violation(s) of the SIP regulations covered by the order during the period the Order is in effect.

DATES: This rule takes effect on April 23, 1979.

FOR FURTHER INFORMATION CONTACT: Robert R. Geddis, Air Enforcement Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308, telephone No. (404) 881-4253.

ADDRESSES: A copy of the State Delayed Compliance Order, any supporting material, and any comments received in response to a prior Federal Register notice proposing approval of the Order are available for public inspection and copying during normal business hours at: U.S. Environmental Protection Agency, Region IV, Air Enforcement Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30308.

SUPPLEMENTARY INFORMATION: On August 10, 1978, the Regional Administrator of EPA's Region IV Office published in the Federal Register, Vol. 43, No. 155, a notice proposing approval of a delayed compliance order issued by the Alabama Air Pollution Control Commission to the Alabama Kraft Company. The notice asked for public comments by September 11, 1978, on EPA's proposed approval of the Order. No public comments were received in response to the proposal notice.

Therefore, the delayed compliance order issued to the Alabama Kraft Company is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places the Alabama Kraft Company on a schedule to brings its wood waste boiler into compliance as expeditiously as practicable with Alabama Air Pollution Control Regulation 4.8.2, part of the federally approved Alabama State Implementation Plan. The Order also imposes interim requirements which meet Sections 113(d)(1)(c) and 113(d)(7) of the Act, and emission monitoring and reporting requirements.

If the conditions of the Order are met, it will permit the Alabama Kraft Company to delay compliance with the SIP regulations covered by the Order until July 1, 1979. The facility is unable to comply immediately with these regulations.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the immediate need to place the Alabama Kraft Company on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) in the Alabama State Implementation Plan.

Authority: 42 U.S.C. 7413(d), 7601.

Dated: April 5, 1979.

Douglas M. Costle
Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in § 65.51:

§ 65.51 EPA Approval of State delayed complaince orders issued to major stationary sources.

* * * * *

Source	Location	Order Number	SIP regulation(s) involved	Date of FR proposal	Final compliance date
*	*	*	*	*	*
Alabama Kraft Company	Cottonton, Ala.	DCO-78-14	Section 4.8.2	Aug. 10, 1978	July 1, 1979.
*	*	*	*	*	*

* * * * *

[FRL 1095-6]

[FR Doc. 79-12444 Filed 4-20-79; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 65

Camp Lejeune Marine Corps Base; Approval of a Delayed Compliance Order Issued by the North Carolina Environmental Management Commission

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the North Carolina Environmental Management Commission to Camp Lejeune Marine Corps Base. The Order requires Camp Lejeune Marine Corps Base to bring air emissions from its four coal fired boilers at the central heating plant located in Camp Lejeune, North Carolina, into compliance with 15 NCAC 2D .0503 and .0521 air pollution control regulations contained in the federally approved North Carolina State Implementation Plan (SIP). Because of the Administrator's approval, Camp Lejeune Marine Corps Base's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATES: This rule takes effect on April 23, 1979.

FOR FURTHER INFORMATION CONTACT: Floyd Ledbetter, Air Enforcement Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308, telephone number: (404) 881-4298.

ADDRESSES: A copy of the State Delayed Compliance Order, any supporting material, and any comments received in response to a prior Federal Register notice proposing approval of the Order are available for public inspection and copying during normal business hours at: U.S. Environmental Protection Agency, Region IV, Air Enforcement Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30308.

SUPPLEMENTARY INFORMATION: On January 17, 1979, the Regional Administrator of EPA's Region IV Office published in the Federal Register, Vol. 44, No. 12, p. 3528, a notice proposing approval of a delayed compliance order issued by the North Carolina Environmental Management Commission to Camp Lejeune Marine Corps Base. The notice asked for public comments by February 16, 1979, on EPA's proposed approval of the Order. No public comments were received in response to the proposal notice.

Therefore, the delayed compliance order issued to Camp Lejeune Marine Corps Base is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places Camp Lejeune Marine Corps Base on a schedule to bring its four coal fired boilers at the central heating plant into compliance as expeditiously as practicable with 15 NCAC 2D .0503 and .0521, part of the federally approved North Carolina State Implementation Plan. The Order also imposes interim particulate emission limits of 0.72 pounds per million BTU and interim opacity limits of 70% opacity aggregate of more than five minutes in any one hour. If the conditions of the Order are met, it will permit Camp Lejeune Marine Corps Base to delay compliance with the SIP regulations covered by the Order until June 30, 1979. The facility is unable to comply immediately with these regulations.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the immediate need to place Camp Lejeune Marine Corps Base on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) in the North Carolina State Implementation Plan.

Authority: 42 U.S.C. 7413(d), 7601.

Dated: April 4, 1979.

Douglas M. Costle,
Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in § 65.381:

§ 65.381 EPA Approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order Number	SIP regulation(s) involved	Date of FR proposal	Final compliance date
*	*	*	*	*	*
Camp Lejeune Marine Corps Base.	Camp Lejeune, N.C..	DCO-78-47.....	.0503 .0521	Jan. 17, 1979....	June 30, 1979.
*	*	*	*	*	*

* * * * *

[FRL 1093-3]
[FR Doc. 79-12445 Filed 4-20-79; 8:45 am]
BILLING CODE 6560-01-M

40 CFR Part 65

Champion International Corp.; Approval of a Delayed Compliance Order Issued by the Lawrence County, Board of Health

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a Delayed Compliance Order issued by the Lawrence County, Alabama, Board of Health to the Champion International Corporation. The Order requires the company to bring air emissions from its wood waste boiler at Courtland, Alabama into

compliance with air pollution control regulations contained in the federally approved Alabama State Implementation Plan (SIP). Because of the Administrator's approval, the Champion International Corporation's compliance with the Order will preclude suits under the federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the Order during the period the Order is in effect.

DATE: This rule takes effect on April 23, 1979.

FOR FURTHER INFORMATION CONTACT: Robert R. Geddis, Air Enforcement Branch, U.S. Environmental Protection Agency, Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308, telephone No. (404) 881-4253.

ADDRESS: A copy of the State Delayed Compliance Order, any supporting material, and any comments received in response to a prior Federal Register Notice proposing approval of the Order are available for public inspection and copying during normal business hours at: U.S. Environmental Protection Agency, Region IV, Air Enforcement Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30308

SUPPLEMENTARY INFORMATION: On Monday, October 2, 1978, the Regional Administrator of EPA's Region IV Office published in the Federal Register, 43 FR 45406, a notice proposing approval of a delayed compliance order issued by the Lawrence County, Alabama, Board of Health to the Champion International Corporation. The notice asked for public comments by November 1, 1978, on EPA's proposed approval of the Order. No public comments were received in response to the proposal notice.

Therefore, the delayed compliance order issued to the Champion International Corporation is approved by the Administrator of EPA pursuant to the authority of Section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The Order places the Champion International Corporation on a schedule to bring its wood waste boiler at Courtland, Alabama into compliance as expeditiously as practicable with Alabama Air Pollution Control Regulation 4.8.2, part of the federally approved Alabama State Implementation Plan. The Order also imposes interim requirements which meet sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements.

If the conditions of the Order are met, it will permit the Champion International Corporation to delay compliance with the SIP regulations covered by the Order until June 30, 1979. The facility is unable to comply immediately with these regulations.

EPA has determined that its approval of the Order shall be effective upon publication of this notice because of the immediate need to place the Champion International Corporation on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) in the State Implementation Plan.

Authority: 42 U.S.C. 7413(d), 7601.

Dated: April 4, 1979.

Douglas M. Costle,
Administrator.

In consideration of the foregoing, Chapter 1 of Title 40 of the Code of Federal Regulations is amended as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By adding the following entry to the table in § 65.51:

§ 65.51 EPA approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order Number	SIP regulation(s) involved	Date of FR proposal	Final compliance date
*	*	*	*	*	*
Champion International Corporation.	Courtland, Ala.	DCO-78-21	Section 4.8.2	Oct. 2, 1978	June 30, 1979.
*	*	*	*	*	*

* * * * *

[FRL 1093-2]
[FR Doc. 79-12446 Filed 4-20-79; 8:45 am]
BILLING CODE 6560-01-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105-64

Regulations Implementing the Privacy Act of 1974; Exemption of Records Systems

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation exempts criminal investigation files in the system of records GSA/ADM-24, Investigation and Personnel Security Case Files, and the system of records GSA/PBS-3, Incident Reporting System, from the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), with certain exceptions, and makes other editorial changes. These changes are made to maintain the efficiency and integrity of the investigations conducted by GSA.

EFFECTIVE DATE: April 23, 1979.

FOR FURTHER INFORMATION CONTACT: Rebecca Thompson, Administration and Records Division, Office of General Counsel (202-566-1460).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking on this matter appeared in the Federal Register on September 22, 1978 (43 FR 43049). The regulation applies a general Privacy Act exemption to the system of records GSA/ADM-24, Investigation and Personnel Security Case Files, and a specific Privacy Act exemption to the system of records GSA/PBS-3, Incident Reporting System. This amendment is consistent with the expanded criminal and civil investigation and law enforcement responsibilities of the Office of Investigations of the GSA Office of Inspector General and the Federal Protective Service of the GSA Public Buildings Service. Interested parties were given the opportunity to submit, no later than October 23, 1978, written comments on the proposed amendments. No unfavorable comments have been received. The proposed changes hereby are adopted. The final rule is set forth below:

The table of contents for Part 105-64 is amended by deleting two entries as follow:

Sec.
105-64.602-1 [Deleted]
105-64.602-2 [Deleted]

Subpart 105-64.3—Individual access to Records

Section 105-64.302-3 is revised to read as follows:

§ 105-64.302-3 Waiver of fee.

The system manager shall make one copy of a record, up to 50 pages, available without charge to a requester who is an employee of GSA. The system manager may waive the fee requirement for any requester if the cost of collecting the fee is an unduly large part of or greater than the fee, or when furnishing the record without charge conforms to generally established business custom or is in the public interest.

Subpart 105-64.5—Report on New Systems and Alteration of Existing Systems

1. Section 105-64.501 is revised to read as follows:

§ 105-64.501 Reporting requirement.

(a) No later than 90 calendar days prior to the establishment of a new system of records, the prospective system manager shall notify the Controller-Director of Administration of the proposed new system. The prospective system manager shall include with the notification a complete description and a justification for each system of records that the system manager proposes to establish. If the Controller-Director of Administration determines that the establishment of the proposed system is in the best interest of the Government, the Controller-Director of Administration will submit, no later than 60 calendar days prior to the establishment of that system of records, a report of the proposal to the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget for their evaluation of the probable or potential effect of that proposal on the privacy and other personal or property rights of individuals.

(b) No later than 90 calendar days prior to the alteration of a system of records, the system manager responsible for the maintenance of that system of records shall notify the Controller-Director of Administration of the proposed alteration. The system manager shall include with the notification a complete description and a justification for each system of records that the system manager proposes to alter. If the Controller-Director of Administration determines that the proposed alteration is in the best interest of the Government, the Controller-Director of Administration shall submit; no later than 60 calendar days prior to the establishment of that alteration, a report of the proposal to the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Management and Budget for their evaluation of the probable or potential effect of that proposal on the privacy and other personal or property rights of individuals.

(c) The reports required by this regulation are exempt from reports control.

2. Section 105-64.502 is revised to read as follows:

§ 105-64.502 Federal Register notice of establishment of new system or alteration of existing system.

The Controller-Director of Administration shall publish in the Federal Register a notice of the proposed establishment or alteration of a system of records when:

(a) The Controller-Director of Administration receives notice that the Senate, the House of Representatives, and the Office of Management and Budget do not object to the establishment of a new system of records or to the alteration of an existing system of records, or

(b) No fewer than 30 calendar days elapse from the date of submission of the proposal to the Senate, the House of Representatives, and the Office of Management and Budget without receipt by the Controller-Director of Administration of an objection to the proposal.

Subpart 105-64.6—Exemptions

1. Section 105-64.601 is revised to read as follows:

§ 105-64.601 General exemptions.

The following systems of records shall be exempt from all provisions of the Privacy Act of 1974 with the exception of subsections (b); (c)(1) and (2); (e)(4)(A) through (F); (e)(6), (7), (9), (10), and (11); and (i) of the act:

(a) Incident Reporting System, GSA/PBS-3.

(b) Investigation and Personnel Security Case Files, GSA/ADM-24.

The system of records GSA/PBS-3 and the criminal investigation case files of the system of records GSA/ADM-24 are exempt to the extent that information in the systems pertains to the enforcement of criminal laws, including police efforts to prevent, control, or reduce crime or to apprehend criminals; to the activities of prosecutors, courts, and correctional, probation, pardon, or parole authorities; and to (1) information compiled for the purpose of identifying individual criminal offenders and alleged offenders and consisting only of identifying data and notations of arrests, the nature and disposition of criminal charges, sentencing, confinement, release, and parole and probation status; (2) information compiled for the purpose of a criminal investigation, including reports of informants and investigators, that is associated with an identifiable individual; or (3) reports identifiable to an individual compiled at any stage of the process of enforcement of the criminal laws, from arrest or indictment through release from supervision. These systems are exempted to maintain the efficacy and integrity of the Federal Protective Service's and the Office of Investigations' law enforcement function.

2. Section 105-64.602-1 is deleted and made part of § 105-64.602. As revised, § 105-64.602 reads as follows:

§ 105-64.602 Specific exemptions.

The following systems of records shall be exempt from subsections (c)(3); (d); (e)(1); (e)(4) (G), (H), and (I); and (f) of the Privacy Act of 1974:

(a) Incident Reporting System, GSA/PBS-3.

(b) Investigation and Personnel Security Case Files, GSA/ADM-24.

The systems are exempt (1) to the extent that the systems consist of investigatory material compiled for law enforcement purposes; however, if any individual is denied any right, privilege, or benefit to which the individual would otherwise be eligible, as a result of the maintenance of such material, such material shall be provided to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence and (2) to the extent the systems consist of investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Federal civilian employment, military service, Federal contracts, or access to classified information, but only to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be

held in confidence, or, prior to the effective date of this section, under an implied promise that the identity of the source would be held in confidence. The systems have been exempted to maintain the efficacy and integrity of lawful investigations conducted pursuant to the Federal Protective Service's and Office of Investigations' law enforcement responsibilities and responsibilities in the areas of Federal employment, Government contracts, and access to security classified information.

3. Sections 105–64.602–1 and 105–64.602–2 are deleted.

§ 105–64.602–1 [Deleted]

§ 105–64.602–2 [Deleted]

(Sec. 205(c), 63 Stat. 390, 40 U.S.C. 496(c); 88 Stat. 1897; (5 U.S.C. 552a))

Note.—The General Services Administration has determined that this document contains only nonsubstantive changes to a significant regulation and is not subject to section 2 or 3 of Executive Order 12044.

Dated: April 11, 1979.

Paul E. Goulding,
Acting Administrator of General Services.

[ADM 7900.4 CHGE2]

[FR Doc. 79–12524 Filed 4–20–79; 8:45 am]
BILLING CODE 6820–38–M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

42 CFR Part 51f

Project Grants for Genetic Diseases Testing and Counseling Programs

AGENCY: Public Health Service, HEW.

ACTION: Final rule.

SUMMARY: This document establishes a regulation for the administration of project grants for genetic diseases testing and counseling services, as authorized by Title XI of the Public Health Service Act. The regulation provides program requirements for grantees and potential grantees.

DATE: Effective date April 23, 1979.

For information relating to comments invited on certain aspects of the regulation see paragraph I. below.

ADDRESS: Comments must be addressed to Director, Division of Policy Development, Bureau of Community Health Services, HSA, PHS, Department of Health, Education, and Welfare, Room 6–17, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT: Audrey Manley, M.D., Acting Chief, Genetic Services Branch, Office of Maternal and Child Health, Bureau of Community Health Services, Room 6–40, 5600 Fishers Lane, Rockville, Maryland 20857, (301–443–1080).

SUPPLEMENTARY INFORMATION: On May 5, 1978, the Secretary published a Notice of Proposed Rulemaking (NPRM) to implement the Genetic Diseases Act, Title XI of the Public Health Service Act (42 U.S.C. 300b *et seq.*). The legislation authorized the Secretary to make project grants for the establishment and operation of testing and counseling programs for a broad range of genetic diseases, including sickle cell anemia, Cooley's anemia, Tay-Sachs disease, cystic fibrosis, dysautonomia, hemophilia, retinitis pigmentosa, Huntington's chorea, and muscular dystrophy.

I. Statutory changes after issuance of NPRM.

After publication of the NPRM (43 FR 19535, May 5, 1978), the Genetic Diseases Act was amended by Section 205 of Pub. L. 95–626, the "Health Services and Centers Amendments of 1978." The amendments include the following:

a. Clarification that coverage of any specific genetic disease or group of diseases is not required but, rather, that the genetic conditions listed in the purpose section of the statute are given merely as examples. In addition, the statute was amended to list two additional examples, genetic conditions leading to mental retardation and genetically caused mental disorders.

b. The legislation previously authorized grants only for projects to establish and operate genetic diseases testing and counseling programs (section 1101(a)). The law now authorizes grants for projects *to plan*, as well as to establish and operate, these programs.

c. Section 1104(c) has been amended to add a requirement for evaluation of projects for genetic testing and counseling services.

d. The legislation was amended to insure that grants will be permitted on less than a statewide or regional basis.

In addition to the above provisions, which will be implemented by this regulation, the revised statute includes two amendments which will be carried out within the Department and, therefore, will not be addressed in the regulation. These amendments are:

a. A requirement for the establishment of an ongoing advisory group to make recommendations to the Secretary regarding grants or contracts for genetic testing and counseling programs; and

b. A new authority which provides for the conduct of epidemiological assessments and surveillance of genetic diseases, the use of epidemiological data for the development of effective programs, and technical assistance to States for such activities as the establishment of data collection systems and the training of appropriate personnel to carry out this type of activity.

Thus, in addition to making changes in response to public comments received with respect to the NPRM, the Department has revised the final regulation to conform to the statute, as amended. The major changes are: (1) Deletion of the proposed requirement that each project cover, at a minimum, the nine listed genetic diseases; comprehensiveness, however, will still be a significant grant award criterion; and (2) the addition of provisions relating to support for planning activities as part of establishing and operating genetic testing and counseling projects. The statutory revisions which require evaluation of project activities and provide for service areas smaller than a State or region will also be reflected in the regulation.

It would be inappropriate to issue a regulation at this time which does not carry out the recent statutory amendments. On the other hand, it would be unproductive to reissue the entire regulation as an NPRM and duplicate the just-completed public comment phase of regulation development. This is particularly true in view of the technical and self-executing nature of most of the amendments. However, in order to avoid any possibility that the public might be denied an opportunity to comment on a matter with respect to which the statute allows discretion, a comment period is allowed with respect to the planning activities now provided for in the final regulation as a result of the recent amendments (see § 51f.106(b)). Comments received not later than June 7, 1979 will be considered, and the regulation will be revised as warranted.

II. Action and changes based on public comment.

A summary of the substantive comments received with respect to the NPRM, of the Department's response to these comments, and of the actions taken in the regulation, are set forth below. The comments and responses have been arranged according to the order of the issues and proposals which were set forth in the NPRM.

1. *Diseases to be included in program coverage*

The statute (Section 402 of Pub. L. 94–278) originally authorized testing and counseling services for a broad range of genetic diseases *including* sickle cell anemia, Cooley's anemia, Tay-Sachs disease, cystic fibrosis, dysautonomia, hemophilia, retinitis pigmentosa, Huntington's chorea, and muscular dystrophy. As a reasonable means of carrying out this law, the Secretary proposed in the NPRM that each project be required to provide services with respect to at least the nine diseases listed. The proposal was meant to provide a minimum basis from which projects would determine the additional genetic disorders for which they intended to provide services, after taking into account the priority needs in their service areas, the availability of reliable screening and diagnostic techniques, and the availability of resources.

One commenter recommended that coverage under the program be determined by requiring services in categories of genetic detection, such as newborn screening, prenatal screening (e.g., blood group factors), prenatal diagnosis, testing for genetic factors with respect to handicapping conditions, and testing for carrier status. The genetic diseases to be covered by each project could then be addressed within these categories of detection and could be determined by the need for services in each project's service area. As stated earlier, comprehensiveness will be a significant criterion in evaluating grant applications; however, in accordance with the statutory amendments discussed above, the final regulation has no requirement for coverage of any specific genetic disease or group of diseases. Although the suggestion for requiring services in particular categories of genetic detection, such as newborn or prenatal screening, was not adopted in the format recommended by the writer, the regulation does require that appropriate detection techniques be employed for a broad range of genetic diseases (see § 51f.106(a)(1)(i)).

Two commenters objected to the proposed requirement that each project provide services with respect to the nine diseases, on the basis that it would be inefficient to require each project to duplicate sophisticated, expensive services which already are available elsewhere, and stated that a more reasonable approach would be to permit projects to have flexibility in their operations regarding establishment, maintenance, or expansion of services, or arrangements to refer patients to other facilities. As noted earlier, the requirement that each project provide services for the nine genetic diseases is not in the final regulation. The final regulation requires that projects offer needed and appropriate genetic services, which may be provided directly or indirectly through arrangements with other facilities (see § 51f.106(a)(1)). These requirements are flexible; projects may arrange for the provision of services by other facilities, rather than duplicate them.

2. *Essential program services*

It was proposed in the NPRM that each grantee be required to provide, at a minimum, *all* of the following essential services: (1) Testing and confirmatory diagnostic procedures, (2) counseling, (3) referral for medical management, (4) followup to assure that referrals have been accomplished, and (5) facilitating services, such as transportation, when needed.

One commenter stated that this enumeration of services could be interpreted to mean that counseling is not considered an essential service in a population-based program such as newborn screening. The proposed minimum set of essential services was stated in the NPRM in narrative style, and apparently the writer did not understand that all these services were considered essential. The final regulation requires that counseling be provided with respect to *any* genetic disease (see, § 51f.106(a)(1)(iii)) by all projects supported under the Act, regardless of the way in which concerned individuals are identified.

Another writer recommended that the requirement for "facilitating services" assure adequate communication with non-english-speaking, deaf, or blind recipients. This recommendation was accepted, and the final regulation includes a requirement for facilitating services, such as transportation of patients and services of an interpreter, to ease access to project facilities and services. These examples are merely illustrative of facilitating services which may be provided by a project. (See, § 51f.106(a)(1)(v).)

Two commenters objected to the proposed requirement that services be made available to all residents of a project's service area, and recommended that this be qualified to permit targeting of services to certain high-risk groups. This recommendation was not accepted. The regulation does not preclude the targeting of services to particular high-risk populations in the service area; the requirement merely assures that all the persons in a service area have an equal opportunity to use the services of the project.

Two respondents stated that the NPRM did not describe adequately the genetic services which should be provided by a project, and recommended that essential genetic services be specifically defined under broad categories of: (1) Early detection, (2) carrier detection, (3) counseling, and (4) diagnosis and monitoring. The Department agrees that these services should be included in programs for genetic testing and counseling. Although the format and the language of the recommendation were not adopted, the final regulation includes requirements that all of these types of services be provided by grantees. (See, § 51f.106(a)(1).)

Two commenters stated that the NPRM did not describe adequately the educational activities which are necessary to assure that genetic testing and counseling services are effectively provided and used. The final regulation includes a requirement that projects provide appropriate informational and educational activities designed to achieve community understanding, awareness of the availability of services, and effective use of the project's services. (See, § 51f.106(a)(9).)

One respondent recommended that essential services include collaboration between genetic counseling agencies and special needs agencies for young children, because many genetic diseases are identified only as a child develops, and collaboration would maximize the use of limited funds. The regulation includes a broad requirement that projects coordinate and integrate project activities with the activities of other health programs, including genetic disease-related programs serving the same population. (See, § 51f.106(a)(3).) The Department has concluded that a listing of particular agencies, such as children's agencies, is therefore unnecessary.

3. *Service area*

Although the statute is not explicit with respect to the size of an area to be served by a project, it does require that programs be operated primarily in conjunction with other existing health programs, including the Maternal and Child Health and Crippled Children's Services (MCH–CC) programs. In order to promote use of the 50 statewide MCH–CC programs, the 33 State-designated, university-based genetic centers, and the statewide newborn screening programs, as well as to provide a population base which would

maximize the effectiveness of a project for genetic testing and counseling, the Secretary proposed that the minimum service area be no smaller than a State.

Two respondents recommended that the regulation permit subdivisions of States which have high density areas and cohesive health care systems, as well as regional programs for less populous States, to be approvable "service areas." The legislation, as amended, now makes provision for the availability of grants on less than a statewide or regional basis. In accordance with the new statutory mandate, the final regulation allows the Secretary to waive the statewise requirement for "good cause shown." (See, § 51f.106(a)(2).) The regulation permits the development of regional programs where appropriate.

4. *Administrative requirements*

One respondent indicated that the NPRM did not set forth administrative requirements to implement the statutory requirement for voluntary participation, and noted that this statutory requirement may conflict with State laws which mandate newborn screening. It was recommended, therefore, that funds under this program be used only for testing not required by State law, with provision for assuring parental knowledge of, and opportunity to refuse, any testing procedures. This suggestion was accepted and is reflected in the final regulation (see § 51f.109(b)(1)). Voluntary participation (see § 51f.106(a)(7)) necessarily means that where an individual (e.g., a minor) does not have the legal capacity to consent to, or refuse to allow, the performance of testing procedures, parents or legal representatives have the right to consent to, or refuse to allow, performance of the services for that person.

The statute requires that informed consent be obtained from a patient (or legal guardian) for the release of medical information. In the NPRM, the Secretary invited suggestions with respect to how this requirement should be implemented, and requested identification of foreseeable problems in its application, particularly when program services are provided by a third party. Two writers felt that physician-providers should obtain consent before disclosing medical information to outside entities, such as health insurers, but that laboratory analysis is an integral part of the physician's services and specific consent should not be necessary. They recommended that informed consent be obtained by the provider at the time services are rendered.

The term "third party" was used in the NPRM merely to solicit views about potential problems with respect to carrying out the requirement for informed consent in broad-based programs where it is expected that arrangements will be made to refer patients to other providers (or facilities) for the provision of services which projects may not have the resources or expertise to provide directly. A requirement is included in the regulation that medical records and information must be held confidential and not be disclosed without the individual's informed consent, except as may be necessary to provide services to the patient or to provide for audits by the Secretary. Thus, such information as laboratory findings is considered an integral part of providing services to patients and, therefore, it would be unnecessary for laboratories to obtain informed consent prior to releasing appropriate information to providers. (See, §§ 51f.106(a)(8) and 51f.110(b).)

Another comment stressed that the central administrative unit of a project must have ongoing community input from individuals who are broadly representative of the population in the service area, including users and providers. The regulation provides for continuing community involvement in the development and operation of a project, but permits flexibility in the arrangements for community participation. (See, § 51f.106(a)(10).)

5. *Criteria for evaluation of grant applications*

The Act requires that, in making awards, the Secretary take into account the number of persons proposed to be served and the extent to which rapid and effective use will be made of funds. In the NPRM, the Secretary proposed several criteria by which to judge the latter half of this requirement. One of the proposed criteria was "the cost effectiveness of the proposal." Two writers objected to this criterion on the basis that cost effectiveness cannot be demonstrated with services such as genetic counseling. To replace the term "cost effective," the writers suggested the following criteria: (1) Use of existing resources (including universities), (2) interstate regionalization when appropriate, (3) plans to promote use of services through educational activities, (4) plans for evaluation, (5) demonstrated capability of the applicant to deliver and coordinate a wide range of genetic services, and (6) pilot programs.

The NPRM merely proposed the basic elements to interpret the statutory requirement with respect to rapid and effective use of funds. The concept of cost effectiveness was used in describing those elements of a plan which are considered significant in judging whether grant funds will be effectively used. The final regulation provides grant award criteria by which to judge the cost effectiveness of an overall project plan. All of the suggested criteria, with the exception of "pilot programs," are included generally in the regulation either as project requirements or grant award criteria, although the specific language of the recommendation was not adopted. Pilot programs are not included in the grant award criteria because the goal of the program is to establish comprehensive projects. However, pilot programs are permitted to the extent that plans to deliver services to certain high-risk groups or underserved areas, or plans to add screening programs for additional genetic diseases, might be phased-in on a pilot basis as part of developing and establishing an overall project. (See. § 51f.108(a).)

6. *Priority for areas in greatest need*

The statute requires that priority be given to programs operating in areas which have the greatest number of persons who may benefit from and are in need of the services. Since a significant proportion of genetic diseases is found in the general population and is not specific to any one identifiable population group, the Secretary proposed that the primary determination of greatest need be based on the population density of the proposed service area. Three writers were critical of this proposal on the basis that this would favor urban areas and discourage applications from less populous States.

The population-base criterion for areas in greatest need has been retained in the regulation in order to carry out the statutory mandate that there be a priority for areas determined to have the greatest number of persons in need, based on the size of the population in a proposed service area and the extent to which available resources are insufficient to meet the needs of that population. (See, § 51f.108(b).) It should be emphasized, however, that the Secretary recognizes that low-density population areas may have few existing resources and great need for genetic services. These factors will be taken into consideration. The Department also will encourage the development of regional programs wherever feasible in

order to maximize the effectiveness of a project and increase the availability of services in less populous areas. (See, § 51f.108(b).)

Another commenter recommended that funds be provided for needs and resource assessments as an initial part of developing a plan and an application for a broad-range genetic disease project. The Department, through the Center for Disease Control (by interagency agreement with the Health Services Administration), will be providing technical assistance in needs and resource assessments under the new Section 1107 of the Act, within the limits of available funding. However, the Department will not award grants under this part for needs and resource assessments for the development of an application for a comprehensive project. It should be noted that the newly revised statute authorizes planning activities in addition to the previously authorized activities of establishing and operating projects for genetic services. Thus, the Department will be supporting "planning" as a phase of developing and operating these projects, although it does not intend to award grants solely for planning purposes.

7. Special consideration for prior sickle cell grantees

The statute requires that the Secretary give special consideration to applicants who were previously funded for the conduct of sickle cell screening and education clinics. The Department proposed, in the NPRM, two approaches for the implementation of this requirement. The first proposal was to give priority in funding to those previously funded applicants who have fully satisfied the statutory and regulatory requirements and are otherwise equal in all respects to alternative applicants. The second proposal was to allow continued funding for sickle cell applicants on a transitional basis while new, broad programs for genetic diseases testing and counseling services are being developed or established in their statewide areas.

One respondent favored the first approach. It was recommended that broad-range genetic disease services be developed and expanded from the base of existing sickle cell programs and that these programs be the principal grantees for broad genetic diseases projects, developed in cooperation with State health agencies. The writer felt that sickle cell programs should be the nucleus of new, broad genetic diseases projects and should be given priority in funding, because it would be more efficient and economical to use the knowledge and experience gained from several years of sickle cell activities. This approach was not selected. The Department concluded that a funding priority only for previously funded sickle cell applicants who are able to establish and operate a comprehensive project (which includes counseling for all genetic disorders and testing for a broad range of genetic diseases) would place many other previously funded sickle cell projects in a noncompetitive position and, therefore, would not be fulfilling the statutory provision with respect to "special consideration."

It should be noted, however, that in developing new programs, the Department fully agrees that efficiency dictates the use of all existing resources to the maximum feasible extent, including manpower, facilities, and well-established mechanisms for service delivery. An existing sickle cell program may apply for a comprehensive genetic diseases testing and counseling project, grant, and demonstrated prior experience will be carefully considered in making grant awards.

Five commenters favored the second approach. They recommended continued funding for sickle cell projects during a transitional period of establishing new, more inclusive programs. These recommendations have been accepted. The regulation includes a provision which permits continued funding for previously funded sickle cell projects during a one-year transitional period, taking into account factors such as need, demonstrated effectiveness, extent to which services would be curtailed if funding were not approved, and plans to become part of a comprehensive genetic diseases project by the end of the project year. Funding is available beyond one year for previously funded sickle cell projects if the Secretary determines that no areawide network of genetic disease services exists, or if coordination with an existing network could not reasonably be accomplished within one year. (See, § 51f.108(c).)

Two writers recommended that the regulation require the incorporation of prior sickle cell grantees in broader programs so as to assure the continuity of sickle cell services in established programs. This recommendation was not accepted. The regulation includes a requirement that approvable projects use existing resources (such as established sickle cell programs) to the maximum feasible extent so as to assure rapid and effective use of funds. The extent to which this requirement would be met is a grant award criterion. Thus, projects are expected to coordinate with previously funded sickle cell programs which have been effective and are still needed. But the Department has concluded that a requirement that all previously funded sickle cell projects be automatically incorporated in approved projects might not always result in an efficient use of limited Federal dollars, particularly in a State which has more than one existing sickle cell project.

8. Other comments

A. Two respondents recommended the establishment of a national network of genetic centers, pointing out that many genetic conditions are rare, and that the establishment of a few centers would be more efficient than duplicating services in each State.

The Department is in full agreement that sophisticated and expensive genetic services should be coordinated on a national basis so that use of these services can be maximized, particularly for rare disorders which may occur infrequently in any given project's service area. A national clearinghouse for the development and dissemination of informational and educational materials is being developed, and projects will be expected to use the informational services of this clearinghouse to identify service facilities and expertise for specific disorders. (It should be noted that not all services have to be provided directly by the project. See, § 51f.106(a)(1).) In addition, to the extent necessary to provide the services authorized under the legislation and within the limits of available funding, projects are also permitted to increase the capability of genetic centers within their service areas, provided that such expenditures would not be duplicating services already available and would be an efficient use of funds.

B. Two writers recommended the establishment of a central epidemiological assessment facility to assist in the development of standards and tools for data collection and analysis, the assessment of needs and resources, and planning. It was also recommended that a central reference laboratory be established to provide standards for genetic laboratory components and promote development and transfer of new technology. These recommendations have already been implemented through interagency agreements with the Center for Disease Control, HEW, and, under the new authority in the statute for applied technology, it is anticipated that these activities will be expanded. In addition, it should be noted that all laboratory facilities used by projects must meet the

standards set forth in 42 CFR Part 405, Conditions of Coverage of Services of Independent Laboratories, and must participate in the Center for Disease Control proficiency testing program. (See, § 51f.106(a)(1)(i).)

C. Two commenters recommended the establishment of a national committee to advise the Secretary on implementation of the Genetic Diseases Act. As noted earlier, the revised legislation requires the establishment of an ongoing advisory committee for the purpose of making recommendations to the Secretary with respect to making grants and entering into contracts for the establishment of genetic testing and counseling programs. This requirement will be carried out administratively and need not be addressed in the regulation.

D. One writer recommended that amniocentesis services not be supported under the program unless patients are given detailed explanations of risks and limitations. The regulation includes a requirement for appropriate explanations to patients with respect to the risks and benefits of any medical procedure involved in genetic testing and counseling services. (See, § 51f.106(a)(7).) Thus, there is no need for a specific provision to this effect regarding amniocentesis.

E. One writer stated that an appropriation level of $4 million for the genetic diseases testing and counseling program is inadequate, particularly in view of the special consideration for sickle cell programs which, the writer stated, alone cost approximately $3 million in one State. Current funding levels for various programs result from a multitude of competing demands for limited Federal dollars, and may necessitate initiating new programs on a limited scale. It should be noted, however, that sickle cell screening and education clinics are being supported with separate and additional funds under another authority (Section 301 of the Public Health Service Act) through FY 1979.

The Assistant Secretary for Health of the Department of Health, Education, and Welfare, with the approval of the Secretary of Health, Education, and Welfare, hereby adds a new Part 51f to Title 42, Code of Federal Regulations, as set forth below.

Dated: February 15, 1979.

Charles Miller,
Acting Assistant Secretary for Health

Approved: April 11, 1979.

Joseph A. Califano, Jr.,
Secretary.

PART 51F—PROJECT GRANTS FOR GENETIC DISEASES TESTING AND COUNSELING PROGRAMS

Sec.

Authority: Sec. 215, Public Health Service Act (42 U.S.C. 216); Sec. 1101(a)(1), Public Health Service Act (42 U.S.C. 300b), as amended by Title II of Pub. L. 95-626, 92 Stat. 3570-3590.

§ 51f.101 To whom do these regulations apply?

The regulations of this part apply to all grants under Section 1101(a)(1) of the Public Health Service Act, as amended (42 U.S.C. 300b(a)(1)), for projects to plan, establish and operate voluntary genetic diseases testing and counseling programs.

§ 51f.102 Definitions.

For the purposes of this part:

"Act" means the Public Health Service Act.

"Carrier" means a person who has a gene or chromosome which may cause a deleterious effect in his or her offspring.

"Genetic diseases" means inherited disorders caused by the transmission of certain aberrant genes from one generation to another.

"Nonprofit," as applied to any private agency, institution, or organization, means that no part of the entity's net earnings benefits, or may lawfully benefit, any private shareholder or individual.

"Secretary" means the Secretary of Health, Education, and Welfare or any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

"Service area" means the area served by a project funded under Section 1101(a)(1) of the Act.

"State" means one of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, or the Trust Territory of the Pacific Islands.

§ 51f.103 Who is eligible to apply for a genetic diseases testing and counseling grant?

Any public or nonprofit private entity is eligible to apply for a grant under this part.

§ 51f.104 How is application made for a genetic diseases testing and counseling grant?

An application for a grant under this part must be submitted to the Secretary at the time, and contain the information and assurances, required by the Secretary. The application must include a budget and narrative plan of the manner in which the project has met, or plans to meet, each of the requirements contained in § 51f.106(a), relating to genetic diseases testing and counseling projects, or § 51f.107, relating to previously funded sickle cell projects. The plan must describe the project in sufficient detail to identify clearly the nature, need, and specific objectives of, and methodology for carrying out, the project.

§ 51f.105 What health planning requirements must be met?

A grant may be made under this part only if the applicable requirements of Section 1513(e) of the Act relating to review and approval by the appropriate health systems agency have been met.

§ 51f.106 What requirements must be met by a genetic diseases testing and counseling project?

(a) *Project requirements.* All projects supported under this part, except previously funded sickle cell projects (described in § 51f.107), and, during the period in which they are engaged in planning activities, those projects described in paragraph (b) of this section, must:

(1) With respect to a broad range of genetic diseases, provide, or have the capability to provide, directly or through written agreements with providers, all of the following essential services:

(i) Individual testing, including those available and appropriate laboratory and clinical evaluation procedures which assure accurate diagnoses of

carriers and persons who may have any of the genetic diseases proposed to be covered by the project; and all laboratory facilities used by the project must meet the standards set forth in 42 CFR Part 405, Conditions of Coverage of Services of Independent Laboratories, and must participate in the Center for Disease Control proficiency testing program;

(ii) Community-wide testing where appropriate, taking into consideration widely prevalent genetic diseases and certain high-risk population groups in which a genetic disease occurs with high incidence, and directed especially to persons who are entering their child-producing years;

(iii) Genetic counseling, to the extent of current knowledge in that field, for all persons concerned about having, or being carriers of, *any* genetic diseases;

(iv) A system for referral of persons to appropriate medical and supportive services, including the exchange of the patient's pertinent clinical records where necessary to provide services to the patient, consistent with the confidentiality requirements in § 51f.110(b), and followup procedures; and

(v) Facilitating services, such as transportation of patients to project facilities and interpreter services, where appropriate to ease access to project services.

(2) Provide, or have the capability to provide, directly or through written agreements with providers, the services described in paragraph (a)(1) of this section so that they are available and accessible promptly, including the provision of services in local facilities, as appropriate, to all of the residents of the service area, in a manner which will assure continuity of services. The service area may be no smaller than a State unless the Secretary waives this requirement for good cause shown.

(3) To the extent feasible, coordinate and integrate project activities with the activities of other federally funded, as well as State and local, health services and genetic disease-related programs serving the same service area.

(4) Provide its services through appropriately qualified individuals who meet applicable State and local licensure requirements and any other certification or legal requirements with respect to their respective professions. The project must monitor all activities supported under this part, whether provided directly or indirectly.

(5) Provide sufficient staff, qualified by training and experience, to ensure that there is coordination of all service elements in the service area, and to ensure that project requirements are continually monitored and met.

(6) Have an ongoing quality assurance program administered by an identifiable unit which provides for periodic assessment of the use of services, and the appropriateness and quality of services provided or proposed to be provided to individuals served by the project.

(7) Assure that acceptance by any individual of services provided by the project is voluntary. An individual's acceptance of services may be deemed voluntary where he or she is legally incompetent and his or her legal representative consents to the provision of the services. The project must explain to patients and/or legal representatives the nature of the procedures proposed to be performed and significant risks and benefits that may be involved.

(8) Assure that all medical records and information about an individual patient will not be disclosed except in accordance with the requirements of § 51f.110(b). All written agreements between the project and other providers must contain assurances that the provider will maintain confidentiality of patient records and will not disclose information about patients except in accordance with the requirements of § 51f.110(b).

(9) Provide appropriate information and education for health care providers, teachers and students, and the general public, designed to achieve community understanding of the objectives of the program; inform the community of the availability of services; and promote participation in the project by persons to whom genetic diseases testing and counseling services may be beneficial.

(10) Provide for continuing community involvement in the development and operation of the project.

(11) Establish a fee schedule and a system for eligibility determination which is commensurate with these elements of the State Crippled Children's Services Program, established under Title V of the Social Security Act, in the project's State.

(12) Operate so that no person is denied service because of inability to pay.

(13) Make every reasonable effort, including the establishment of systems for eligibility determination, billing, and collection, to:

(i) secure payment from patients in accordance with the fee schedule described in paragraph (a)(11) of this section; and

(ii) collect reimbursement from third parties, to the extent that third parties (including Government agencies) are authorized or legally obligated to pay.

(14) Have a written agreement with third parties for reimbursement where a significant percentage of the cost of care and services provided by or through the project will be reimbursed by third parties. This requirement may be waived by the Secretary for good cause shown.

(b) *Requirements for planning.* Any project supported under this part whose application does not contain a plan satisfactory to the Secretary must:

(1) Develop a plan for the implementation of a comprehensive genetic diseases testing and counseling program, within a reasonable length of time, which (i) is based on an assessment of the need of the population proposed to be served for the services described in § 51f.106(a)(1), (ii) indicates in detail how the project will fulfill those needs and meet the requirements set forth in paragraph (a) of this section, and (iii) provides for the time-phased recruitment of personnel essential for operation of the project; and

(2) Submit the plan, developed in accordance with the requirements of paragraph (b)(1) of this section, to the Secretary for approval. The plan may be implemented only after the Secretary has determined that the proposed project will meet all of the requirements of paragraph (a) of this section.

§ 51f.107 What requirements must be met by a previously funded sickle cell project?

A sickle cell project which was previously funded under Section 301 of the Act and which receives funding under this part, in addition to meeting the requirements listed in § 51f.106(a) (2) through (14), must:

(a) Provide in its service area, directly or through written agreements with providers, all of the essential services listed in § 51f.106(a)(1) with respect to sickle cell anemia.

(b) Coordinate its services with an areawide network of genetic diseases testing and counseling services, if there is one in its service area, within the project year. The Secretary may waive this requirement for good cause shown.

§ 51f.108 What criteria will HEW use to decide which genetic diseases testing and counseling projects to fund?

(a) Within the limit of funds determined by the Secretary to be available for this purpose, the Secretary may award grants under this part to applicants which will, in his judgment, best promote the purposes of section 1101(a)(1) of the Act and these regulations, taking into account:

(1) The extent to which the project would meet the requirements set forth in § 51f.106(a);

(2) The number of persons proposed to be served and the extent to which rapid and effective use of funds would be made;

(3) The comprehensiveness of the proposed project, with particular attention to the number of genetic diseases with respect to which the applicant intends to provide, either directly or indirectly, screening and testing services;

(4) The feasibility of the plan in the application for providing services;

(5) The degree to which the project will be operated in conjunction with programs supported under Title V of the Social Security Act, relating to Maternal and Child Health and Crippled Children's Services;

(6) The extent to which the project proposes to coordinate its activities with the activities of other health services and genetic disease-related programs, including federally assisted sickle cell projects, in the service area;

(7) Whether the project is or proposes to be a part of a network of services covering the entire service area;

(8) The capability of the applicant to provide sound financial management; and

(9) The applicant's plans for evaluation in such areas as management efficiency, the effectiveness of services, and the degree to which project goals will be met.

(b) *Priorities.* The Secretary will give priority to applicants for projects in areas which he determines have the greatest number of persons who may benefit from and are in need of genetic disease testing and counseling services. This determination will be based on the size of the general population of the proposed service area and the extent to which available resources are insufficient to meet the needs of that population for these services.

(c) *Previously funded sickle cell projects.* The Secretary will give special consideration to applications from entities which were funded under Section 301 of the Act in the preceding fiscal year for the conduct of sickle cell projects. The Secretary may support these projects under this part for one year so that they may develop and establish new, broad genetic diseases programs or be coordinated with an areawide network of genetic disease services, if one exists. If no areawide network of genetic disease services exists, or if coordination with an existing network could not, in the Secretary's judgment, reasonably be accomplished within one year, the Secretary may support these projects beyond one year. The Secretary may award grants to sickle cell projects which will, in his judgment, best promote the purposes of the Act and these regulations, taking into account:

(1) The extent of unmet need for sickle cell-related services in the service area;

(2) The effectiveness of the project's previous performance with respect to use of funds and provision of services;

(3) The effectiveness of the applicant's plan and the soundness of its management;

(4) Whether an areawide plan to cover a broad range of genetic diseases has been developed and will be implemented in a service area which includes the service area of the applicant, during the project year for which the applicant requests funding;

(5) The effectiveness of the applicant's plan to become a service component in an areawide network of services within the project year, if an areawide network exists; and

(6) Whether the provision of sickle cell services would be terminated or rendered ineffective if funding were not approved.

§ 51f.109 For what purposes may grant funds be used?

(a) Grant funds awarded under this part may be used for, but need not be limited to, meeting the costs of the following:

(1) genetic screening and testing;

(2) confirmatory diagnostic procedures;

(3) genetic counseling for persons found to have or to be carriers of genetic disease;

(4) data collection;

(5) facilitating services, such as transportation of patients to project facilities or interpreter services, as needed;

(6) educational activities to promote public awareness and use of the project's services; and

(7) planning activities, to the extent approved by the Secretary.

(b) Grant funds awarded under this part may not be used to support the costs of:

(1) screening or testing procedures which are required by State law; or

(2) inpatient or outpatient treatment services.

(c) Other funds available to the grantee for genetic testing and counseling services must be used, to the maximum extent possible, before using funds awarded under this part, and every reasonable effort must be made to maximize the receipt of funds from all other sources.

§ 51f.110 What additional information should an applicant or grantee have about a genetic diseases testing and counseling grant?

(a) *Applicability of HEW Department-wide regulations.* Attention is drawn to the following HEW Department-wide regulations which apply to grants under this part:

(1) 45 CFR Part 16—Department Grant Appeals Process.

(2) 45 CFR Part 74—Administration of Grants.

(3) 45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health, Education, and Welfare's implementation of Title VI of the Civil Rights Act of 1964.

(4) 45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance.

(b) *Confidentiality.* All information as to personal facts and circumstances obtained by the project staff about recipients of services must be held confidential and must not be disclosed without the individual's informed consent, except as may be necessary to provide services to the patient or to provide for audits by the Secretary or the Comptroller General, with appropriate safeguards for confidentiality of patient records. Otherwise, information may be disclosed only in summary, statistical, or other form which does not identify particular individuals.

(c) *Additional conditions.* The Secretary may with respect to any grant impose additional conditions prior to or at the time of any award when in his judgment these conditions are necesssary to assure or protect advancement of the approved program, the interests of public health, or the proper use of grant funds.

[FR Doc. 79-12547 Filed 4-20-79; 8:45 am]
BILLING CODE 4110-84-M

Office of Education

45 CFR Part 130

Library Services and Construction

AGENCY: Office of Education, HEW.

ACTION: Final Regulations.

SUMMARY: These final regulations respond to the statutory amendments to the Library Services and Construction Act. They establish the rules governing three new provisions of the Act—

(1) Federal funds spent for administration shall now be matched with State or other non-Federal funds;

(2) The base year for meeting maintenance of effort requirements for services for handicapped and institutionalized persons is the second preceding fiscal year to the year for which funds are requested; and

(3) Additional emphasis has been placed on strengthening major urban resource libraries.

EFFECTIVE DATE: These regulations are expected to take effect 45 days after they are transmitted to Congress. Regulations are usually transmitted to Congress serveral days before they are published in the Federal Register. The effective date is changed by statute if Congress disapproves the regulations or takes certain adjournments. If you want to know the effective date of these regulations, call or write the Office of Education contact person.

FOR FURTHER INFORMATION CONTACT: Mrs. Elizabeth H. Hughey, Office of Libraries and Learning Resources, 400 Maryland Avenue, S.W., (ROB-3, Room 3319-B) Washington, D.C. 20202, Telephone: (202) 472-5150. Copies of the Library Services and Construction Act and other statutory materials referred to in these regulations may be obtained by contacting this office.

SUPPLEMENTARY INFORMATION:

A. Background

The Library Services and Construction Act (LSCA) provides assistance to the States to extend public library services to areas where they do not exist and to improve these services where they are inadequate.

Originally enacted as the Library Services Act in 1956, Pub. L. 84-597, the LSCA has been amended and extended through subsequent years. Pub. L. 95-123 extends the program through FY 1982.

The Commissioner published in the Federal Register on March 2, 1978, (43 FR 8561) a Notice of Decision to Develop Regulations. Comments received in response to that notice were considered in drafting the Notice of Proposed Rulemaking published in the Federal Register of June 5, 1978 (43 FR 24334). During the period allowed for comments in response to the proposed regulations, 12 comments were received. The overall reaction to the regulations was supportive. Comments and responses are included in section B of the preamble.

The program will be operated as before. Only minor substantive amendments are being made by the regulations to implement the new provisions in Pub. L. 95-123. However, the wording of the entire final regulations has been revised and simplified to make them easier to read and understand. Matters covered by part 100b of the General Education Provisions Regulations have been deleted.

This revision to simplify the language of these regulations did not appear in the Notice of Proposed Rulemaking. It does not involve any substantive changes. The only substantive changes were subject to public comment in the Notice of Proposed Rulemaking.

The Act has four titles:

I. Library Services.

II. Public Library Construction.

III. Interlibrary Cooperations.

IV. Older Readers Services. However, no funds have been requested or appropriated for this title since it was enacted.

Beginning with the extension in 1970, the emphases in title I (Library Services) have been to—

(1) Provide library services to disadvantaged persons in both rural and urban areas;

(2) Extend library services to the State's institutionalized residents and to the physical handicapped, including the blind;

(3) Strengthen metropolitan public libraries that serve as national or regional resource centers; and

(4) Improve and strengthen the capacity of State library administrative agencies to meet the needs of all the people of their respective States.

In 1975 another priority, library services to persons of limited English-speaking ability, was added as specified in the Education Amendments of 1974.

A new priority is added to title I (Library Services) in the 1977 amendments and is implemented by these regulations: To improve the capability of public libraries in densely populated areas to serve as major resource libraries. Because of the value of their collections to individual users and to other libraries, these libraries need special assistance to furnish services at a level required to meet the demands for these services. This amendment is applicable only if the annual appropriation for title I (Library Services) exceeds $60,000,000. Procedural requirements for carrying out this new priority have been included in the Basic State Plan provisions of § 130.16 *(Basic State plan)* and the long-range program provisions of § 130.19 *(Long-range program)* of the regulations.

In addition these amendments provide that any Federal funds expended for the administration of the Act must be equally matched by State or other non-Federal funds. The amendments provide, also, that funds available for expenditure for library services to the physically handicapped and the institutionalized in the current fiscal year shall be not less than the amount expended in the second preceding fiscal year.

B. Summary of comments and responses

The following is a summary of the commments received and the responses of the Commissioner. The comments appear in the order of the sections of the final regulations.

§ 130.3 *Definitions—"Major urban resource library."*

(1) *Comment.* Several comments were received on the definition of "major urban resource library." One commenter felt that the requirement of a population of 100,000 or more individuals was biased and unrealistic.

Response. No change has been made in the regulations. Congress has set the 100,000 population figure in defining a major urban resource library. This figure appears in the definition of a major urban resource library in Section 4(b) of the Library Services and Construction Act Amendments of 1977 (Pub. L. 95-123), upon which these regulations are based.

The legislative history of Pub. L. 95-123 indicates that a lesser figure of 50,000 was considered. However, it was felt that since most libraries are in financial trouble, it would be best to concentrate on the largest libraries (those in areas with a population of 100,000 or more). Smaller libraries, also, will be helped through, among other things, loans from the large library collections.

In determining the figure of 100,000, Conference Report No. 95-607 states on page 7:

> The conferees expect that, in determining the existence of cities with a population of 100,000 or more individuals, the Commissioner shall determine this number on the basis of the most recent satisfactory data available from the Department of Commerce.

The State library administrative agency will determine which of these cities have libraries that qualify as major urban resource libraries.

(2) *Comment.* Another commenter suggested that in defining a major resource library, the population of the library's service area be substituted for that of the city in which the library is located.

Response. No change has been made in the regulations. The Library Services

and Construction Act Amendments of 1977 (Pub. L. 95–123) in Section 4(b) use the term "city" in defining a major urban resource library. In an early bill (S 602) introduced on February 3, 1977 in the Senate to revise the Library Services and Construction Act, the phrase "standard metropolitan statistical area" was used in the definition in place of the term "city." This was later changed to "city" and enacted in Pub. L. 95–123.

(3) *Comment.* Several commenters questioned the meaning of the phrase "services to users throughout the regional area" in the definition of a major urban resource library, and whether binding contracts are required to furnish services to users within the regional area.

Response. The regulations do not require that an urban library provide specific types of services to specific institutions or individuals to qualify as a major urban resource library. It was not the intent of Congress to impose Federal requirements to stifle local or State initiative and authority. Rather, it is the responsibility of a State library administrative agency to determine the regional area and the types of services that best meet the needs of that area.

This could mean the provision of services by a major urban resource library to residents of the city, suburb, or distant points, or to other libraries. There is no special list of users. Specified individual services, such as reference and information, or several services might be provided. No formal contracts are required, but States may find written agreements useful.

§ 130.32 *Library services.* (Section 130.4 in Notice of Proposed Rulemaking).

(4) *Comment.* A commenter suggested that funds allocated for supporting and expanding services of major urban resource libraries be distributed by the State library agency on a per capita basis to each of these public libraries located in a city having a population of 100,000 or more individuals.

Response. No change has been made in the regulations. A similar suggestion to include a population per capita computation for distribution of major urban resource library funds was made in testimony at the hearings before the Subcommittee on Education, Arts and Humanities of the Committee on Human Resources, United States Senate, on S. 602 (a bill to extend and revise the Library Services and Construction Act). The Congress, however, chose not to include this type of formula which it felt would benefit only a few States.

If the appropriation for grants to States for library services under Title I of the Library Services and Construction Act exceeds $60 million, the amount in excess of $60 million (not to exceed 50 percent of that excess) is to be reserved by the State, where applicable, for strengthening major urban resource libraries. These qualifying libraries are assured, under Pub. L. 95–123, a proportionate share of these funds based on the ratio of their total population to the population of the entire State. The regulations cannot require distribution of funds based upon a formula not required by the Act. (See 20 U.S.C. 1231.)

§ 130.32 *Eligible costs.*

(5) *Comment.* A commenter questioned whether allowable costs of a major urban resource library under the Act would include research service costs as well as lending service costs.

Response. Yes, the costs of research services as well as lending services are allowable. Costs of branch libraries (if they exist) and the central library of a major urban resource library may be considered.

§ 130.40(d) *Conditions for payments to States.*

(6) *Comment.* Several commenters requested clarification of paragraph (d). This requires an assurance from a State that it will not reduce the amount of funds paid to an urban resource library below the amount that the library received in the year immediately preceding the year for which the determination for the reservation of funds for a major urban resource library is made under section 103(2) (State Annual Program for Library Services) of the Act.

Response. No change has been made in the regulations. A State must assure the Commissioner that it will not reduce the amount of Federal funds paid to a qualifying urban resource library below the amount the library received in the preceding year for the purpose of serving as a resource library.

In order to meet the pressing financial needs of libraries in major urban areas, section 102(a)(3) (Uses of Federal Funds) has been added to the Library Services and Construction Act. This section provides that if appropriations for library services under title I (Library Services) of the Act exceed $60 million, a portion of the money beyond that figure will be reserved for major urban resource libraries.

The formula divides the excess over $60 million so that a qualifying major urban resource library may share in the excess based on the ratio of its population to the entire State population.

C. Location of Changes in the Regulations to Implement the New Amendments in Pub. L. 95–123

Section 130.1 (*Purpose and scope*)—The purpose and scope are enlarged to include "strengthening major urban resource libraries."

Section 130.3 (*Definitions*)—The definition of "major urban resource libraries" is added.

Section 130.34(a) (*Use of Federal funds by State library administrative agency*)—A limitation is placed on Federal dollars used for administration. That amount is equal to the non-Federal funds used for administration of the program by a State.

Section 130.17 (*Criteria for determining adequacy of public library services*)—This section is amended to add to the criteria for determining adequacy of public library services consideration of the special needs of persons and libraries in densely populated areas of 100,000 population or more for services from "major urban resource libraries".

Section 130.19(b)(3)(iv) (*Long-range program*)—Changes the maintenance of effort base year from 1971 to "the second preceding fiscal year" to the year for which funds are requested for library services for the physically handicapped and State-supported institutions.

Section 130.40(c) (*Conditions for payments to States*)—Is changed to read "second preceding fiscal year."

Section 130.40(d) (*Conditions for payments to States*)—Is changed to (e). The new (d) requires assurance from the State that no defined major urban resource library will receive fewer Federal funds than it received in the preceding year.

D. Citations of legal authority

As required by Section 431(a) of the General Education Provisions Act (20 U.S.C. 1232(a)), as amended by Section 405 of Pub. L. 94–482, and Section 503 of the Education Amendments of 1972, a citation of statutory or other legal authority for each section of the regulations has been placed in parentheses on the line following the text of the section.

(Catalog of Federal Domestic Assistance Number 13.464, Library Services—Grants for Public Libraries—Title I)

Dated: February 13, 1979.

Ernest L. Boyer,
U.S. Commissioner of Education.

Approved: April 14, 1979.

Joseph A. Califano, Jr.,
Secretary of Health, Education, and Welfare.

Accordingly, 45 CFR Part 130 is revised to read as follows:

PART 130—LIBRARY SERVICES, PUBLIC LIBRARY, CONSTRUCTION, AND INTERLIBRARY COOPERATION

Subpart A—Types of Assistance

Sec.

Subpart B—State Plan Provisions

Subpart C—Federal Financial Participation

Subpart D—Payments and Reports

Authority: Sec. 2, Pub. L. 91-600, as amended, 84 Stat. 1650 (20 U.S.C. 351), unless otherwise noted.

Subpart A—Types of Assistance

§ 130.1 Purpose and scope.

The purpose of these regulations is to implement the Library Services and Construction Act. This Act provides for Federal grants to assist States to—

(a) Establish, extend, and improve public library services in areas that are without these services or in which these services are inadequate;

(b) Construct public libraries;

(c) Establish, extend, and improve public library services including those for physically handicapped, institutionalized, disadvantaged persons, and persons with limited English-speaking ability;

(d) Strengthen State library administrative agencies;

(e) Promote interlibrary cooperation;

(f) Strengthen major urban resource libraries.

(20 U.S.C. 351)

§ 130.2 General provisions regulations.

Financial assistance under this part is subject to the applicable provisions of subchapter A of this chapter—relating to fiscal, administrative, property management, and other matters (See 45 CFR Part 100b).

(20 U.S.C. 351)

§ 130.3 Definitions.

(a) As used in this part, the following terms have the meaning given them in section 3 (Definitions) of the Library Services and Construction Act as amended:

Annual program
Basic State plan
Commissioner
Construction
Equipment
Library service
Library services for the physically handicapped
Long-range program
Public library
State
State advisory council on libraries
State institutional library services
State library administrative agency or State agency

(20 U.S.C. 351a)

(b) In addition to the definitions in paragraph (a)—"Act" means the Library Services and Construction Act, as amended.

(Pub. L. 91-600, as amended 20 U.S.C. 351)

"Disadvantaged persons" means persons who have educational, socio-economic, cultural, or similar disadvantages that prevent them from receiving the benefits of library services designed for persons without these disadvantages. The term includes persons whose need for special services results from poverty, neglect, delinquency, or cultural or linguistic isolation from the community at large. The term does not include physically or other handicapped persons, unless these persons also suffer from the disadvantages described in this paragraph.

(20 U.S.C. 351)

"Interlibrary cooperation," under title III (Interlibrary Cooperation) of the Act, means the establishment, expansion and operation of local, regional, and interstate cooperative library networks. The purpose of a network is to provide for the systematic and effective coordination of the resources of school, public, academic and special libraries and information centers for improved supplementary services for the special clientele served by each type of library or center. A network may serve a community, metropolitan area, or region within a State, or a Statewide or multi-State area. It consists of two or more types of libraries.

(20 U.S.C. 355e-1)

"Library materials" means books, periodicals, newspapers, documents, pamphlets, photographs, reproductions, microforms, pictorial or graphic works, musical scores, maps, charts, globes, sound recordings, slides, films, filmstrips, and processed video and magnetic tapes; printed, published, audiovisual materials, and non-conventional library materials designed specifically for the handicapped; and materials of a similar nature.

(20 U.S.C. 351)

"Major urban resource library" means a public library that—

(1) Is located in a city having a population of 100,000 or more;

(2) Because of the value of its collections, needs special assistance to furnish services at a level required to meet the demands made by individual users and other libraries; and

(3) Provides services to these users throughout the region in which this library is located.

(20 U.S.C. 351a(14), 353(a)(3))

"Public library services" means library services provided free of charge by or on behalf of a public library. The term does not include those library services that are properly the responsibility of schools.

(20 U.S.C. 351a(6))

§ 130.4 State advisory council on libraries.

(a) *General.* A State that desires to receive funds under the Act for any fiscal year shall establish a State advisory council on libraries. The State shall submit for each fiscal year a certification that it has established the council. The certification shall include the names of the council members and for each member a statement of identification that shows the representation required by paragraph (b) of this section.

(b) *Membership.* The membership of the State advisory council on libraries

shall include persons broadly representative of each of the following:

(1) Public libraries.

(2) School libraries.

(3) Academic libraries.

(4) Special libraries, such as law or medical libraries.

(5) Institutional libraries, such as reformatory or hospital libraries.

(6) Libraries serving the handicapped in the State, and

(7) Users of these libraries. These users shall comprise at least one-third of the council membership, and at least one member shall be representative of disadvantaged persons.

(c) *Functions and responsibilities.* The State advisory council on libraries shall—

(1) Advise the State library administrative agency on the development of the State plan, including the preparation of long-range and annual programs under §§ 130.19 *(Long-range program)* and 130.30 *(Annual program);*

(2) Advise the agency on policy matters arising in the administration of the State plan; and

(3) Assist the agency in evaluating library programs, services, and activities under the State plan.

(20 U.S.C. 351a(8), 351d)

Subpart B—State Plan Provisions

§ 130.15 State plan—General.

(a) *Purpose.* The purpose of the State plan is to provide—

(1) A framework within which the State will encourage the establishment or expansion of programs to carry out the purpose stated in § 130.1 *(Purpose and scope);* and

(2) The basis for Federal payments to the State under this part.

(b) *Format.* The State plan consists of three parts:

(1) The basic State plan provided for in § 130.16 *(Basic State plan).*

(2) The long-range program provided for in § 130.19 *(Long-range program).*

(3) The annual program provided for in § 130.20 *(Annual program).*

(20 U.S.C. 351d(a))

(c) *Submissions.* To receive its allotment for any fiscal year a State shall—

(1) Have in effect a basic State plan amended in accordance with § 130.22 *(Amendments)* and approved by the Commissioner in accordance with § 130.16 *(Basic State plan).*

(2) Submit or update a long-range program in accordance with § 130.22 *(Amendments);*

(3) Submit an annual program for which each allotment is desired.

§ 130.16 Basic State plan.

(a) The basic State plan shall consist of the following:

(1) A State-Federal agreement consisting of assurances (including those in § 130.40 *(Conditions for payments to States))* and certifications submitted in a form prescribed by the Commissioner.

(2) A statement of criteria—developed under § 130.17 *(Criteria for determining adequacy of public library services)*—for use by the State library administrative agency in determining the adequacy of public library services. This statement shall include criteria designed to assure that priority will be given to programs or projects that serve urban and rural areas with high concentrations of low-income families, as determined under § 130.18 *(Urban and rural areas with high concentration of low-income families),* and to programs or projects that serve areas with high concentrations of persons with limited English-speaking ability (as defined in Section 703(a) of Title VII of the Elementary and Secondary Education Act of 1965, as amended).

(3) For purposes of strengthening major urban resource libraries in accordance with section 102(c) (Uses of Federal Funds) of the Act, a statement defining the regional areas served by these libraries and stating the criteria that the State will use to determine whether the collections of these libraries are of value to individual users and other libraries of the regional areas in which these major urban resources libraries are located.

(b)(1) The Commissioner approves the basic State plan or its amendment for each fiscal year if the Commissioner determines that—

(i) The plan fulfills the conditions of a basic State plan specified in paragraph (a) of this section;

(ii) The information in the long-range and annual programs indicates that the State has adequate procedures to insure that the assurances and provisions of the basic plan will be carried out; and

(iii) All three parts of the State plan will be made public.

(2) The Commissioner does not finally disapprove any basic State plan or amendment to a State plan without first affording the State reasonable notice and opportunity for a hearing.

(20 U.S.C. 351a(11), 351d (b) and (c).)

§ 130.17 Criteria for determining adequacy of public library services.

In developing criteria for determining the adequacy of public library services to geographic areas and groups of persons, the State library administrative agency shall give special consideration to the library needs of the following:

(a) Disadvantaged persons residing in urban or rural areas with high concentrations of low-income families.

(b) Persons residing in areas of the State that are without public library services or in which these services are inadequate.

(c) Physically handicapped persons, including the blind and other visually handicapped.

(d) Inmates, patients, or residents of penal institutions, reformatories, residential training schools, orphanages, residential schools for handicapped persons, and other general or special institutions or hospitals operated or substantially supported by the State.

(e) Persons of limited English-speaking ability.

(f) Persons and libraries in densely populated areas—of 100,000 or more persons—for services from major urban resource libraries.

(20 U.S.C. 351a(14) and d(b), 353(a)(e).)

§ 130.18 Urban and rural areas with high concentration of low-income families.

(a) In developing criteria to assure that priorty will be given to programs or projects serving urban and rural areas with high concentrations of low-income families, the State library administrative agency shall, on the basis of the most recent information available to it, determine these areas.

(b) The criteria developed as part of the Basic State plan and incorporated by reference in the State-Federal agreement shall indicate—

(1) The areas of the State designated as urban and rural areas with high concentrations of low-income families;

(2) The criteria that the State agency used in designating these areas; and

(3) The sources of information on which the State based these criteria and the frequency with which the State updated this information.

(20 U.S.C. 351(d).)

§ 130.18a Areas with high concentration of persons of limited English-speaking ability.

In developing criteria to assure that priority will be given to programs or projects serving areas with high concentrations of persons of limited English-speaking ability, the State library administrative agency shall consider—

(a) Individuals who were not born in the United States or whose native language is a language other than English; and

(b) Individuals who come from environments where a language other than English is dominant and who, because of this, have difficulty speaking and understanding instructions in the English language. (See Section 703(a) of Title VII of the Elementary and Secondary Education Act of 1965, as amended).

(20 U.S.C. 351d, 880b–1(a)(1).)

§ 130.19 Long-range program.

(a)(1) The State library administrative agency shall develop the long-range program with the advice of the State advisory council and in consultation with the U.S. Commissioner of Education.

(2) The agency shall—

(i) Annually review and revise the long-range program in accordance with changing needs for assistance in the State;

(ii) Use the results of evaluations and surveys by the State agency and the State advisory council; and

(iii) Incorporate revisions into the annual program for each fiscal year.

(b) The long-range program shall contain the following:

(1) A description of the State's identified present and projected library needs.

(2) A plan for meeting those identified needs with funds under the Act over the next five fiscal years, beginning with the fiscal year in which the agency submits the program.

(3) For purposes of strengthening major urban resources libraries in accordance with section 102(c) (Uses of Federal Funds) of the Act—

(i) A description of the needs and demands for library services of individual users and other libraries in the regional areas served by major urban resource libraries; and

(ii) A plan for these libraries to provide services at a level sufficient to meet these needs.

(4) A statement of the following policies, criteria, priorities, and procedures, to be updated as required in meeting the State's library needs—

(i) Policies and procedures for the periodic evaluation of the effectiveness of programs and projects supported under the Act;

(ii) Policies and procedures for appropriate dissemination of the results of these evaluations and other information pertaining to these programs or projects;

(iii) Policies and procedures for the effective coordination of programs and projects supported under the Act with library programs and projects operated by institutions of higher education or local elementary or secondary schools and with other public or private library service programs;

(iv) Criteria used in allocating funds under title I (Library Services) of the Act among the purposes stated in section 102 (Uses of Federal Funds) of the Act and § 130.31 (*Library services*) of these regulations. These criteria shall be consistent with the criteria in the basic State plan under § 130.16(a)(2) (*Basic State plan*). They shall insure that the State will expend from Federal, State, and local sources a total amount not less than the amount expended by the State from these sources for State institutional library services and library services to the physically handicapped during the second preceding fiscal year;

(20 U.S.C. 354(3).)

(v) Criteria, policies, and procedures for the approval of applications for the contruction of public library facilities under title II (Public Library Construction) of the Act. These shall insure that every local of other public agency whose application for construction funds under the plan is denied will be given an opportunity for a hearing before the State library administrative agency; and

(vi) Criteria, policies, and procedures for the approval of applications for interlibrary cooperation under title III (Interlibrary Cooperation) of the Act.

(20 U.S.C. 351a(12), 351d(d), 354, 355c, 355e–2.)

§ 130.20 Annual program.

The State library administrative agency shall develop the annual program with the advice of the State advisory council and in consultation with the U.S. Commissioner of Education. The annual program shall contain the following:

(a) A detailed description of a program for the use of funds under each of the titles of the Act.

(b) A description of how each program will fulfill the State's library needs stated in the long-range program in a manner consistent with the policies, criteria, priorities, and procedures specified in the long-range program.

(c) A program description of the specific activities to be carried out by the State in the fiscal year—

(1) With funds for library services under title I (Library Services) of the Act for the purpose and activities stated in section 102 (Uses of Federal Funds) of the Act and § 130.31 (*Library services*) of these regulations; and

(2) With funds for interlibrary cooperation under title III (Interlibrary Cooperation) of the Act for the purposes and activities stated in section 302 (Uses of Federal Funds) of the Act and § 130.33 (*Interlibrary cooperation*) of these regulations.

(d) An annual extension of the five-year, long-range program for one additional year. This shall take into consideration the results of evaluations of the State's library program by the State library administrative agency and the State advisory council.

(20 U.S.C. 351a(13), 354, 355c, 355e–2)

§ 130.21 Notification of construction project approval and completion.

(a) The State agency shall submit to the Commissioner on forms furnished by the Commissioner—

(1) Written notification of its approval of each library construction project under title II (Public Library Construction) of the Act within 30 days of that approval; and

(2) Written notification, within 30 days, of the completion of each project.

(b)(1) The effective date of the library construction project shall be no earlier than the date on which the State agency approves the project.

(2) No construction contract for a project may be made by the applicant until—

(i) After the effective date of the project; and

(ii) After the State has received from the Commissioner, or the Commissioner's designee, acknowledgement of the receipt of the notification required under paragraph (a) of this section.

(20 U.S.C. 355c)

§ 130.22 Amendments.

(a) The State agency shall amend the long-range program to reflect changes in—

(1) Estimates of present and projected program needs;

(2) The plan of action for meeting these needs; and

(3) Policies, criteria, priorities, and procedures.

(b) The State library administrative agency shall submit these amendments each year as part of the long-range program extension.

(20 U.S.C. 351d, 354, 355c, 355e–2)

§ 130.23 Older readers services.

If funds are appropriated for Older Readers Services a State shall make appropriate amendments to its basic

State plan, long-range program and annual program to meet the requirements of Title IV of the Act.

Subpart C—Federal Financial Participation

§ 130.30 Application of Federal requirements.

(a) Federal funds under the Act may be used only to share in expenditures that are made in accordance with the State plan and that meet the requirements of the Act and the regulations in this Part.

(b) State and local funds used to match the Federal funds must also meet these requirements.

(20 U.S.C. 353, 355b, 355–1)

§ 130.31 Library services.

Except as provided in § 130.34 (*Use of Federal funds by State Library administrative agency*), funds allotted to a State for the purposes of Section 101 (Grants for States for Library Services) of title I (Library Services) of the Act shall be used solely for paying the Federal share of the cost of the activities accepted under Section 102 (Uses of Federal Funds) of the Act.

(20 U.S.C. 352; 353(a))

§ 130.32 Public library construction.

(a) *General.* Funds allotted to a State for the purpose of section 201 (Grants to States for Public Library Construction) of title II (Public Library Construction) of the Act may be used solely for the purpose of paying the Federal share of the cost of public library construction projects that—

(1) Are approved by the State library administrative agency;

(2) Are consistent with the State's long-range program submitted in accordance with § 130.19 (*Long-range program*); and

(3) Will result in a usable public library building under the State plan.

(b) *Terms and conditions with respect to construction.* A State agency shall assure that, on all construction projects it approves for assistance under title II (Public Library Constructon) of the Act, it will comply with the provisions of subpart K (Construction Requirements) of part 100b of this chapter.

(c) At the discretion of the State agency, the following costs attributable to a public library construction project approved under this section are allowable if the recipient incurred these costs after the date of project approval or within the time period specified in paragraph (3) of this section:

(1) Erection of new buildings to be used for public library facilities.

(2) Expansion, remodeling, and alteration—as distinguished from maintenance and repair—of existing buildings to be used for public library purposes.

(3) Expenses—other than interest and the carrying charges on bonds—related to the acquisition of an existing building or of land on which there is to be construction of new buildings or expansion of existing buildings to be used for public library facilities. These expenses must constitute an actual cost or transfer of public funds in accordance with the usual procedures generally applicable to all State and local agencies and institutions. The recipient must have occurred these expenses within three fiscal years preceding the fiscal year in which the State agency approved the project.

(4) Site grading and improvement of land on which these facilities are located.

(5) Architectural, engineering, and inspection expenses incurred after site selection.

(6) Expenses related to the acquisition and installation of initial equipment to be located in a public library facility provided by a construction project. This equipment includes all necessary building fixtures and utilities, office furniture, public library equipment. An applicant may not include the costs of books or other library materials.

(20 U.S.C. 352, 355b, 355e–1)

(d) *Display of signs.* A grantee or subgrantee that receives assistance for a construction project shall display, at the construction site, a sign stating that Federal funds provided under the Library Services and Construction Act are being used for this construction. If specifications call for a plaque in the completed building indicating the date of completion and source of funds, the grantee or subgrantee must note on the plaque that funds were provided under the Act.

(20 U.S.C 351b(a)(2), 355a–355c)

§ 130.33 Interlibrary cooperation.

Funds allotted to a State for the purposes of section 301 (Grants to States for Interlibrary Cooperation Programs) of title III (Interlibrary Cooperation) of the Act shall be used solely to pay the cost of carrying out the State plan as it relates to interlibrary cooperation. This includes—

(a) Planning for and taking steps leading to developing interlibrary cooperation; and

(b) Establishing, expanding, and operating local, regional, State or interstate cooperative projects or networks of libraries.

(20 U.S.C. 355e, 355e–1)

§ 130.34 Use of Federal funds by State library administrative agency.

In addition to the activities specified in section 102 (Uses of Federal Funds) funds allotted under the Act to a State for the purposes of section 101 (Grants for States for Library Services) of title I (Library Services) of the Act may also be used to pay the Federal share of the cost of the following activities of the State library administrative agency:

(a) Administration of the State plan submitted and approved under the Act and subpart B (State Plan Provisions) of this part, including obtaining the services of consultants.

(20 U.S.C. 351f)

(b) Statewide planning for and evaluation of library services.

(c) Dissemination of information concerning library services.

(d) The activities of the State advisory council under § 130.4 (*State advisory council on libraries*) and of other advisory groups and panels that may be necessary to assist the State library administrative agency in carrying out its functions.

(e) Training of librarians and other library personnel engaged in activities under the Act.

(f) Otherwise strengthening the capactiy of the State library administrative agency for meeting the needs of the people of the State and in carrying out the purposes of the Act.

(20 U.S.C. 352, 353(b))

(g) Administrtive costs necessary to carry out activities (a) through (f): All Federal funds used for administrative costs must be matched equally by non-Federal funds.

§ 130.35 Federal and State shares of eligible expenditures.

(a) *General.* (1) The Commissioner determines, under section 7(b) (Payments to States) of the Act, the Federal share for each State under titles I (Library Services) and II (Public Library Construction) of the Act.

(20 U.S.C. 351e(b))

(2) The State share for titles I (Library Services) and II (Public Library Construction) is the difference between the costs under the State plan and the applicable Federal share.

(3) The Federal share for each State under title III (Interlibrary Cooperation) is 100 percent.

(b) *Limitation.* (1) The expenditures that a State shall consider in computing

its share for library services under title I (Library Services) are only those that are made from public funds. Public funds include contributions from private organizations or individuals if these funds are deposited, in accordance with State and local laws and regulations, to the account of the State or political subdivision or agency without conditions or restrictions that would negate their character as public funds.

(2) The expenditures that the State shall consider in computing its share for construction under title II (Public Library Construction) of the Act are those made by the applicant for that purpose, regardless of the source of funds.

(20 U.S.C. 351e(b), 355c-1(b))

Subpart D—Payments and Reports

§ 130.40 Conditions for payments to States.

The Commissioner makes payments to a State under the Act only after the Commissioner determines that—

(a) The State has on file—

(1) A basic State plan approved by the Commissioner under § 130.16 *(Basic State plan)*;

(2) A long-range program submitted and updated under § 130.19 *(Long-range program)*; and

(3) An annual program submitted under § 130.20 *(Annual program)*, for the fiscal year of the allotment;

(b) The State has satisfactorily assured the Commissioner that it will have available for expenditure under title I (Library Services) of the Act during the fiscal year of the allotment—

(1) From State and local sources—

(i) Sums sufficient to earn its minimum allotment as stated in section 5(a) of the Act; and

(ii) Not less than the local amount actually expended in areas covered by the programs for the year for the purposes of these programs from those sources in the second preceding fiscal year; and

(2) From State sources—Not less than the total amount actually expended for these purposes from these sources in the second preceding fiscal year;

(c) In the case of payments under title I (Library Services) of the Act, the State during the year of the allotment, will expend from Federal, State, and local sources an amount not less than the total amount expended by the State from those sources for State institutional library services and library services to the physically handicapped during the second preceding fiscal year.

(d) The State has satisfactorily assured the Commissioner that—with respect to library services of major urban resource libraries—it will not reduce the amount of Federal funds paid to an urban resource library for these services below the amount that the library received in the year preceding the year for which the determination is made under clause (2) of section 103 (State Annual Program for Library Services) of the Act; and

(e) The State has established a State advisory council on libraries under § 130.4 *(State advisory council on libraries)*.

(20 U.S.C. 351d(a), 351e(a), 354, 354(3))

§ 130.41 Withholding of payments.

(a) The Commissioner withholds payments to a State if—after giving the State agency reasonable notice and opportunity for a hearing—the Commissioner determines on the basis of available information that—

(1) The State plan has been changed so that it no longer complies with State plan requirements in the Act or the regulations in this part; or

(2) In the administration of the State plan or of any program under this part, there is a failure to comply substantially with any requirement, assurance, or other provision in the plan.

(b) The Commissioner notifies the State agency that no further payments will be made to the State until the Commissioner is satisfied that the State has complied with these requirements, assurances, or other provisions.

(c) The Commissioner may notify the State agency that payment of Federal funds will be limited to support of programs under the State plan or portions of the State plan not affected by the State's failure to comply with these requirements.

(20 U.S.C. 351d(e))

§ 130.42 Reports.

The State agency shall submit to the Commissioner of Education one copy of all surveys, films and other publications developed with Federal funds under the Act.

(20 U.S.C. 351d(b))

[Editorial Note: The following appendix will not appear in the Code of Federal Regulations.]

Appendix—Department of Health, Education, and Welfare, Office of Education Basic State Plan (State-Federal Agreement)

Library Services and Construction Act, as Amended by Public Law 95-123

The ———— (Officially Designated State Library Administrative Agency) of the State of ————, hereinafter called the State Agency hereby agrees and assures that this Basic State Plan which serves as an agreement between State and Federal Governments under the Library Services and Construction Act, as amended, for which Federal funds are being requested for the fiscal year ending September 30, 19——, will be administered in accordance with the following provisions:

1. *The State Agency.* a. Assures that it will administer, or supervise the administration of the programs authorized by the Act; and has adequate fiscal and legal authority to do so. (See appended Certificate of Legal Authority.)

b. Assures that it has provided for fiscal control and funds accounting procedures that will assure proper disbursement of and accounting for, Federal funds paid to the State under the Act (including any funds paid by the State to any other public or private nonprofit agency under this Basic State Plan).

c. Assures that it will submit to the Office of Education, and otherwise make public (1) the State's long-range program on or before October 1, 19——, and (2) the State's annual program on or before October 1 of each fiscal year. Both programs will be developed in consultation with the U.S. Commissioner of Education and with the advice of the State Advisory Council on Libraries.

d. Assures that any funds paid to the State in accordance with a long-range program and an annual program shall be expended solely for the purposes for which funds have been authorized and appropriated.

e. Assures that it will make reports, including reports of evaluations, in such form and containing information as the Commissioner may reasonably require to carry out the Commissioner's functions under the Act, and to determine the extent to which funds provided under the Act have been effective in carrying out its purposes.

f. Assures that it will keep records and afford access thereto as the Commissioner may find necessary to assure the correctness and verification of all reports submitted to the Commissioner.

g. Assures that it will establish and specify in the State's long-range program its policies, priorities, criteria, and procedures necessary to the implementation of all programs in which the State will participate under the provisions of the Act, which are incorporated by reference herein.

h. Assures that it will set forth in the State's long-range program its policies and procedures for the coordination of programs and projects supported under this Act with library programs and projects operated by institutions of higher education or local elementary or secondary schools, with other public or private library services programs, and with other related service programs.

i. Assures that it has established a State Advisory Council on Libraries as required by the provisions of the Act and § 130.4 (*State advisory council on libraries*) of the regulations. (See attached certification.)

j. Assures that it has available for expenditures under title I of the Act in this fiscal year (fiscal year 19——):

A. From State and local sources:

1. Sums sufficient to earn its basic minimum allotment.

2. Not less than the total amount actually expended, in areas covered by the programs for year, for the purposes of the programs from such sources in the second preceding fiscal year (fiscal year 19——).

B. From State sources:

1. Not less than the total State amount actually expended for these purposes from these sources in the second preceding fiscal year (fiscal year 19——).

k. Assures that it will expend in this fiscal year (fiscal year 19——) from Federal, State, and local sources, an amount not less than the total amount expended by the State from those sources for State institutional library services, and library services to the physically handicapped, in the second preceding fiscal year (fiscal year 19——).

l. Assures that the amount of Federal funds expended by the State for administrative purposes will be equally matched with State or other non-Federal funds.

m. Assures that the amount of Federal funds paid by a State to a major urban resource library in the year for allotment will not be less than the amount of Federal funds paid of purposes of clause (2) of section 103 (State Annual Program for Library Services) of the Act, in the preceding year.

n. Herewith sets forth criteria to be used in determining the adequacy of public library services to geographical areas, and for groups of persons in the States, including criteria designed to assure that priority will be given to progams or projects which serve urban and rural areas with high concentration of low-income families; and concentration of persons of limited English-speaking ability. (See attached statement of Criteria.)

o. Assures that the Basic State Plan has been submitted to the Governor for review and comments, or a statement that no comments have been made, as well documents required under the program, will also be submitted for the Governor's review, and comments, if any, will accompany the amendments or other required program material when they are submitted to the U.S. Office of Education.

p. Assures that it will make public the Basic State Plan as approved by the Commissioner.

q. Assures that it will otherwise comply with the requirements of the Act and the regulations of the Commissioner of Education issued thereunder (45 CFR Part 130, 45 CFR Part 100b)

r. Assurance is hereby given that, in accordance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*) and the regulations issued thereunder by the Department of Health, Education, and Welfare (45 CFR Part 80) no individual shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under this plan. The State Agency has established and will maintain methods of administration to assure that each program or activity for which it receives Federal financial assistance will be operated in accordance with the preceding paragraph of this statement. The State Agency will amend its methods of administration from time to time as necessary to carry out the purposes for which this statement is given. The State Agency recognizes and agrees that Federal financial assistance will be extended in consideration of, and in reliance on, the representations and agreements made in this statement; and that the United States shall have the right to seek administrative and judicial enforcement thereof.

(State Library Administrative Agency)

(Address)

(Signature of Authorized State Agency Official)

(Title)

Certificate of Appropriate State Legal Officer

I hereby certify that ——————, (Name of State Agency) —————— (Name of State) is the sole State agency with authority under State law to develop, submit and administer or supervise the administration of, the State plan under the Library Services and Construction Act, as amended by Public Law 95-123; that ——————(Name of authorized State Agency Official) is the Officer authorized to submit the State plan for the named State agency; that the State Treasurer or —————— (Title of Officers other than State Treasurer) has authority under State law to receive, hold and disburse Federal funds under the State plan; and that all provisions contained in the plan are consistent with the State law.

(Signature, Attorney General or Other State Legal Officer)

(Title)

(Date)

(20 U.S.C. 351a(11), 351d(b))

[FR Doc. 79-12481 Filed 4-20-79; 8:45 am]

BILLING CODE 4110-02-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 250

Revision of Regulations in Order To Conform Application Requirements to Title V Assistance Programs

AGENCY: Federal Railroad Administration, Department of Transportation.

ACTION: Revisions to Final Rule.

SUMMARY: The Federal Railroad Administration ("FRA") is revising its regulations regarding applications for guarantee of an obligation under the Emergency Rail Services Act ("ERSA") in order to make them conform to its regulations under title V of the Railroad Revitalization and Regulatory Reform Act of 1976. Because ERSA applicants also may apply for assistance under title V, FRA believes that the revision will reduce the burden on applicants.

EFFECTIVE DATE: April 23, 1979.

FOR FURTHER INFORMATION CONTACT: Stan Prymas, Office of Federal Assistance, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 at 202-472-7174. Lawrence A. Friedman, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, S.W., Washington, D.C. 20590 at 202-426-7737.

SUPPLEMENTARY INFORMATION: As the amendment provided herein simply conforms, to the extent possible, the ERSA application requirements to existing title V application requirements and therefore will reduce the burden on applicants, the regulations are not expected to have any economic, regulatory or environmental impact.

In consideration of the foregoing 49 CFR 250.1 and 250.2 are amended to read as follows:

Authority: Sec. 3(f) of the Emergency Rail Services Act of 1970, Pub. L. 91-663; Sec. 1.49(m), regulations of the Office of the Secretary of Transportation, 49 CFR 1.49(m).

§ 250.1 Form and content of application.

The application shall include, in the order indicated and by section numbers and letters corresponding to those used in this part, the following:

(a) As to the Trustee:

(1) Full and correct name and principal business address.

(2) The name and address of the reorganization court under the direction of which the Trustee is acting and the docket number of the proceeding.

(3) Name, title, and address of the person to whom correspondence regarding the application should be addressed.

(4) Brief description of the loan and its purpose or purposes, including statements of

(i) The total amount of the loan and the amount of the guarantee being sought,

(ii) The purpose or purposes for which the loan proceeds will be used,

(iii) The maturity date or dates,

(iv) The date or dates on which the Trustee desires the funds to be made available, and

(v) The rate of interest.

(5) Statement, in summary form, showing financial obligations to or claims against the United States or obligations for which the United States is guarantor, if any, by applicant or any

applicant's parent as to the date of the application, including:

(i) Status of any claims under litigation; and

(ii) Any other debts or credits existing between the applicant and the United States, showing the department or agency involved in such loans, claims and other debts;

(6)(i) Statement on behalf of the Trustee that the Trustee has endeavored to obtain a loan or loans for the purpose or purposes proposed without a guarantee by the Secretary, but has not been able to obtain a loan therefor upon reasonable terms, or if only upon terms considered unreasonable, a statement setting forth such terms and describing any facts relevant thereto.

(ii) Information as to the Trustee's efforts to obtain the needed financing without a guarantee thereof by the Secretary, and as to the results of such efforts. (See § 250.2(b)(1) as to exhibits on this subject.)

(7) Full and complete statement, together with independent supporting evidence, where feasible, concerning the effect that cessation of essential transportation services of carrier would have on the public welfare.

(8) Full and complete statement, together with supporting evidence, where possible, demonstrating that cessation of essential transportation services by applicant carrier is imminent.

(9) Full and complete statement, together with supporting evidence, if possible, that there is no other practicable means of obtaining funds to meet payroll and other expenses necessary to provide essential transportation services other than the issuance of Trustee certificates. Such statements shall include in detail a complete listing of all nontransportation assets of the carrier and corporate affiliates, or subsidiaries having a fair market value of not less than $50,000, together with the amount of encumbrances thereon, if any, and a statement or plan for the disposition or sale of such assets as a means of obtaining funds necessary for essential transportation services.

(10) Full and complete statement, together with supporting evidence, if possible, demonstrating, with particularity, that the carrier can reasonably be expected to become self sustaining within a reasonable period of time.

(11) Full and complete statement, together with supporting evidence, that the probable value of the assets of the carrier in the event of liquidation provides reasonable protection to the United States.

(b) As to the holder or holders:

(1) Full and correct name and principal business address.

(2) Names and addresses of principal executive officers and directors, or partners.

(3) Reference to applicable provisions of law and the charter or other governing instruments conferring authority to the lender to make the loan and to accept the proposed obligation.

(4) Brief statement of the circumstances and negotiations leading to the agreement by the lender to make the proposed loan, including the name and address of any person or persons, or employees of the carrier, representing or purporting to represent the Trustee in connection with such negotiations.

(5) Brief statement of the nature and extent of any affiliation or business relationship between the lender and any of its directors, partners, or principal executive officers, on the one hand, and, on the other, the carrier and any of its directors, partners, or principal executive officers, or any person or persons whose names are required to be furnished under paragraph (b)(4) of this section.

(6) Full and complete statement of all sums paid or to be paid and of any other consideration given or to be given by lender in connection with the proposed loan, including with respect thereto: (i) name and address of each person to whom the payment is made or to be made, (ii) the amount of the cash payment, or the nature and value of other consideration, (iii) the exact nature of the services rendered or to be rendered, (iv) any condition upon the obligation of the lender to make such payment, and (v) the nature of any affiliation, association, or prior business relationship between any person named in answer to paragraph (6)(i) of this section and the lender or any of its directors, partners, or officers.

(c) As to the impact of the financing on the environment:

Summary statement of the use to which funds will be put and any anticipated impact on the environment. After reviewing this submission, the Administrator retains the right to require the Trustee to submit a detailed assessment of the financing's impact on the environment in a general format to be supplied by the Administrator.

§ 250.2 Required exhibits.

There shall be filed with and made a part of each application and copy thereof the following exhibits, except that exhibits filed with the Administrator pursuant to some other statutory provision or regulation which are in the same format as the following exhibits may be incorporated in and made part of the application filed under this part by reference. While the application is pending, when actual data become available in place of the estimated or forecasted data required in the exhibits under this part, such actual data must be reported promptly to the Administrator in the form required in the appropriate exhibit.

(a) The following exhibits are required concerning the Trustee and the carrier:

(1) As Exhibit 1, copy of duly certified order of the court, or instrument of appointment, appointing trustees of the carrier.

(2) As Exhibit 2, a certified copy of the order(s) of the reorganization court having jurisdiction of applicant authorizing (i) the filing of the application with the Administrator for a guarantee of the Trustee's certificate; (ii) filing of the application with the Interstate Commerce Commission for authority to issue a Trustee's certificate; (iii) such pledge of security for the loan and the guarantee as the applicant proposes in connection with Exhibit 3; and (iv) compliance by the Trustee with conditions to the guarantee imposed by law and the Administrator.

(3) As Exhibit 3, full and complete statement, together with supporting evidence, that the probable value of the assets of the railroad in the event of liquidation provides reasonable protection to the United States.

(4) As Exhibit 4, a map of the carrier's existing railroad.

(5) As Exhibit 5, statement showing miles of line owned; miles operated; number of units of locomotives, freight cars, and passenger cars owned and leased; principal commodities carried; and identification of the ten most important industries served.

(6) As Exhibit 6, statement as to whether any railroad affiliated with the carrier has applied for or received any Federal assistance since 1970.

(7) As Exhibit 7, statement showing total dividends, if any, declared and total dividends paid for each of the last 5 calendar years and for each month of the current year to latest available date.

(8) As Exhibit 8, a copy of applicant's most recent year-end general balance sheet certified by applicant's independent public accountants, if available, and a copy of applicant's most recent unaudited general balance sheet as of a date no less recent than the end of the third month preceding the date of the filing of the application. The unaudited balance sheet shall be

presented in account form and detail as required in schedule 200 of the Commission's annual report R–1 or R–2, as appropriate, together with the following schedules (where changes in accounts from the end of the prior year to date of the application have not been significant, copies of the appropriate schedules in the prior year's R–1 or R–2 with marginal notations listing the changes may be substituted):

(i) Particulars of account 704, Loans and Notes Receivable, in form and detail as required in schedule 201 of annual report R–1 for the Class I railroads, and in similar form for the Class II railroads except that for Class II railroads, loans and notes receivable that are each less than $25,000 may be combined into a single amount;

(ii) Particulars of investment in affiliated companies and other investment in form and detail required in schedules 205 and 206 of annual report R–1, or schedules 1001 and 1002 of annual report R–2, as appropriate;

(iii) Particulars of balances in accounts 741, Other Assets, and 743, Other Deferred Changes, in form and detail required in schedule 216 of annual report R–1 or schedule 1703 of annual report R–2, as appropriate;

(iv) Particulars of loans and notes payable in form and detail required in schedule 223 of annual report R–1, or schedule 1701 of annual report R–2, as appropriate, as well as information as to bank loans, including the name of the bank, date and amount of the original loan, current balance, maturities, rate of interest, and security, if any;

(v) Particulars of long-term debt in form and detail required in schedules 218 and 219 of annual report R–1 or schedules 670, 695, 901, 902 and 1702 of annual report R–2, as appropriate, together with a brief statement concerning each mortgage, pledge, and other lien, indicating the property or securities encumbered, the mortgage limit per mile, if any, and particulars as to priority;

(vi) Particulars of balance in account 784, Other Deferred Credits, in form and detail required in schedule 225 of annual report R–1 or schedule 1704 of annual report R–2, as appropriate; and

(vii) Particulars as to capital stock in form and detail required in schedules 228, 229, and 230 of annual report R–1 or schedule 690 in annual report R–2, as appropriate.

(9) As Exhibit 9, a copy of carrier applicant's report to its stockholders or report of the trustee for each of the 3 years preceding the year in which the application is filed.

(10) As Exhibit 10, applicant's most recent annual income statement certified by applicant's independent public accounts if available, and a spread sheet showing unaudited monthly and year-to-date income statement data for the calendar year in which the application is filed in account form similar to that required in column (a) of schedule 300 of annual report R–1 or R–2 as appropriate. For those months preceding and ending upon the date of the unaudited balance sheet presented in Exhibit 8, the income statement shall be reported on an actual basis and so noted. For those months between the dates of the unaudited balance sheet and the filing of the application, the income statement data shall be reported on an estimated basis and so noted and shall be submitted in conjunction with corresponding estimated month-end balance sheets. For those months between the date of the application and the end of the year income statement data shall be presented on a forecasted basis and so noted and shall be submitted in conjunction with a forecasted balance sheet as at the year end.

(11) As Exhibit 11, spread sheets showing for each of the four years subsequent to the year in which the application is filed, both before and after giving effect to the proceeds of the assistance required in the application:

(i) Forecasted annual income statement data in account form and detail similar to that required in column (a) of schedule 300 of annual report R–1 or R–2 as appropriate, including the subaccounts comprising line 2 (railway operating expenses), as specified by lines 64, 92, 105, 159, 166, and 180 of Schedule 320; and

(ii) Forecasted year-end balance sheets in account form and detail similar to that required in schedule 200 of annual report R–1 or R–2, as appropriate. These spread sheets shall be accompanied by a statement setting forth the bases for such forecasts.

(12) As Exhibit 12, a spread sheet showing changes in financial position for the year in which the application is filed in account form and detail as required in schedule 309 of annual report R–1 and R–2 as appropriate as follows:

(i) For that period ending on the date of the unaudited balance sheet in Exhibit C, based upon actual data; and

(ii) For that period from the balance sheet date to the end of the year, based upon estimated and forecasted data.

(13) As Exhibit 13, a spread sheet showing forecasted changes in financial position for each of the four calendar years subsequent to the year in which the application is filed, both before and after giving effect to any funds requested in the application and including a statement showing the bases for such estimates, in account form and detail as required in schedule 309 of the annual Report R–1 for Class I railroads in similar form and detail for Class II railroads.

(14) As Exhibit 14, a statement showing actual cash balance at the beginning of each month and the actual cash receipts and disbursements during each month of the current year to the date of the latest balance sheet furnished as Exhibit 8, together with a monthly forecast (both before and after giving effect to use of proceeds from the proposed loan) for the balance of the current year and the year subsequent thereto.

(15) As Exhibit 15, a general statement setting forth the facts as to estimated prospective earnings and other funds upon which applicant relies to repay the loan.

(b) The following exhibits are required as to the transaction.

(1) As Exhibit 16, copies of correspondence from all, and not less than three, lending institutions or security underwriters to which application for the financing has been made, evidencing that they have declined the financing unless guaranteed by the Secretary or specifying the terms upon which they will undertake the financing without such guarantee.

(2) As Exhibit 17, specimens, or forms where specimens are not available, of all securities to be pledged or otherwise issued in connection with the proposed loan; and in case of mortgage, a copy of the mortgage or indenture.

(3) As Exhibit 18, copies of the loan agreement entered into, or to be entered into, between the Trustee and lender, and of any agreements or instruments executed or be executed in connection with the proposed loan.

Dated: April 9, 1979.

John M. Sullivan,

Administrator, Federal Railroad Administration.

[RCC-Economic Docket No. 79-1, Notice No. 1]
[FR Doc. 79-12511 Filed 4-20-79; 8:45 am]
BILLING CODE 4910-06-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

Substitution of Trailers for Boxcars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order, Revised Service Order No. 1369.

SUMMARY: The Atchison, Topeka and Santa Fe Railway Company has a movement of copper articles from Amarillo, Texas, to five destinations. Revised Service Order No. 1369 authorizes the ATSF to substitute a maximum of four trailers for each boxcar ordered for these shipments.

DATES: Effective 11:59 p.m., April 17, 1979. Expires when modified or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423. Telephone (202) 275-7840. Telex 89-2742.

SUPPLEMENTARY INFORMATION: The Order is printed in full below.

Decided: April 16, 1979.

An acute shortage of boxcars for transporting shipments of copper coiled rod and other copper articles exists on The Atchison, Topeka and Santa Fe Railway Company (ATSF) at Amarillo, Texas. The ATSF has an available supply of certain trailers that may be substituted for this traffic at the ratio of four trailers for each boxcar, and use of these trailers for the transportation of copper articles is precluded by certain tariff provisions, thus curtailing shipments of copper articles. There is a need for the use of these trailers to supplement the supplies of plain boxcars for transporting shipments of copper articles. It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure herein are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered, § 1033.1369 Substitution of trailers for boxcars:

(a) Each common carrier by railroad subject to the Interstate Commerce Act shall observe, enforce, and obey the following rules, regulations and practices with respect to its car service:

(1) *Substitution of cars.* The Atchison, Topeka and Santa Fe Railway Company (ATSF) may substitute a maximum of four trailers for each boxcar ordered for shipments of copper coiled rod and other copper articles from Amarillo, Texas, destined to Chicago, Illinois, routed ATSF direct; and to Syracuse, New York; Providence, Rhode Island; Worcester, Massachusetts and Secaucus, New Jersey, and routed ATSF—Consolidated Rail Corporation, subject to the conditions in paragraphs (2) through (6) of this order.

(2) *Concurrence of Shipper Required.* The concurrence of the shipper must be obtained before trailers are substituted for each boxcar ordered as authorized in paragraph one of this order.

(3) *Minimum Weights.* The minimum weight per shipment for which trailers have been substituted for one boxcar, as authorized in paragraph one of this order, shall be that specified in the applicable tariff for the car ordered.

(4) *Endorsement of Billing.* Bills of lading and waybills covering movements authorized by this order shall contain a notation that shipment is moving under authority of Revised Service Order No. 1369.

(5) *Damage Free Equipped Trailers.* Damage Free Equipped Trailers may not be used for these shipments.

(6) *Deramping of the Trailers.* Shipments to Secaucus will be deramped at Syracuse for ramp site delivery to consignee. Shipments to Providence and Worcester will be deramped at Worcester and made available to consignee at ramp site. Shipments to Syracuse will be deramped at Kearny, New Jersey, and made available to consignee at ramp site.

(b) *Rules and regulations suspended.* The operation of tariffs or other rules and regulations, insofar as they conflict with the provisions of this order, is hereby suspended.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) *Effective date.* This order shall become effective at 11:59 p.m., April 17, 1979.

(e) *Expiration.* The provisions of this order shall remain in effect until modified or vacated by order of this Commission.

(49 U.S.C. (10304-10305 and 11121-11126).)

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael.

H. G. Homme, Jr.,
Secretary.

[Revised Service Order No. 1369]
[FR Doc. 79-12546 Filed 4-20-79; 8:45 am]
BILLING CODE 7035-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 26

Ruby Lake National Wildlife Refuge, Nevada; Public Entry and Use

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule establishes special regulations governing boating use at the Ruby Lake National Wildlife Refuge, Nevada. The intent is to establish boating regulations consistent with the primary purposes for which the refuge was established by setting opening dates and horsepower limitations for boats.

DATES: These special regulations will be effective May 23, 1979 through December 31, 1979.

FOR FURTHER INFORMATION CONTACT: Patrick L. O'Halloran, Area Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E-2740, Sacramento, California 95825, telephone (916) 484-4664.

SUPPLEMENTARY INFORMATION: The primary author of this document is Patrick L. O'Halloran.

Background

Final regulations for 1978 were published in the Federal Register on April 21, 1978 (43 FR 16981). On June 29, 1978, a lawsuit was filed in United States District Court, Washington, D.C., against the Secretary of the Interior, the Assistant Secretary for Fish and Wildlife and Parks, and the Director, Fish and Wildlife Service, by the Defenders of Wildlife, et al., (Civil Action No. 78-1210). Following two days of trial on the matter, the District Court on July 11 declared the April 21 regulations invalid because the Secretary failed to make a finding that the permitted recreational use would not

be inconsistent with the primary purposes for which the refuge was established.

Revised regulations were published in the Federal Register on July 25, 1978 (43 FR 32133). These regulations were also challenged in an action brought by the Defenders of Wildlife (Civil Action No. 78–1332), and on August 18 were declared invalid by the District Court. The Secretary was then ordered to issue new regulations within 15 days "which permit secondary uses of Ruby Lake only insofar as such usages are not inconsistent with the primary purposes for which the refuge was established". Such regulations were issued on September 7, 1978 (43 FR 39798).

The Refuge Recreation Act of 1962 (16 U.S.C. 460k) authorizes the Secretary of the Interior to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires (1) that such recreational use will not interfere with the primary purposes for which the area was established; and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation.

The recreational use authorized by these regulations will not interfere with the primary purposes for which the Ruby Lake National Wildlife Refuge was established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976, and the Service's Environmental Impact Assessment published in June 1976, public comment received on earlier proposed rules, public comment on the assessment, and the evidence presented during litigation of the court cases cited herein. Funds are available for the administration of the recreational activities permitted by these regulations.

On January 5, 1979, the Fish and Wildlife Service published a proposed rule (44 FR 1433) concerning these special regulations. Interested persons were given until February 5, 1979, to submit comments.

Discussion of Comments

One comment was received from the Defenders of Wildlife. The Defenders did not oppose the proposed special regulations, but cautioned that to permit more expansive recreational use of Ruby Lake than that proposed by the January 5 rule would be inconsistent with prior judicial determinations and with the Refuge Recreation Act and the Migratory Bird Conservation Act. Defenders also expressed concern that the proposed regulations failed to provide for a drawdown of the lake level in 1979, and stated that the final rule should express an adequate waterfowl-related justification for this failure as well as a new date for the drawdown.

The water management plan for Ruby Lake calls for a periodic drawdown of the water level in the South Sump of Ruby Lake to maintain and periodically rejuvenate aquatic vegetation. The objective is to increase productivity and a desirable composition of marsh vegetation and organisms.

In the litigation previously mentioned, the Fish and Wildlife Service expressed an intent to initiate a drawdown in 1979. This drawdown has been postponed to permit coordination of research on the marsh to measure the effects of the drawdown and to aid in future water management.

Since this is a management practice rather than a public use regulation, it is not deemed appropriate that these special regulations be modified as requested by the Defenders.

As provided by 50 CFR 26.33, the Service hereby issues the following Special Regulations:

§ 26.34 Special regulations concerning public access, use and recreation for Ruby Lake National Wildlife Refuge, Nevada.

Beginning on June 15, 1979, and continuing until December 31, 1979, motorless boats and boats with electric motors will be permitted only on that portion of the Ruby Lake National Wildlife Refuge known as the South Sump. Beginning on August 1, 1979, and continuing until December 31, 1979, boats with a single motor rated 10 horsepower or less will also be permitted on the South Sump of the Refuge. Water skiing or the use of jet skis will not be permitted. Boats may be launched only from landings approved and so designated by the Refuge Manager.

Maps depicting the South Sump will be available from the Refuge Manager and will be posted at the boat landings. Copies of the maps can also be obtained from: (1) The Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 Northeast Multnomah Street, Portland, Oregon 97232; and (2) the Area Manager, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E–2740, Sacramento, California 95825.

Note.—The Department of the Interior has determined that this document is not significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Dated: March 6, 1979.

William D. Sweeney,

Area Manager—California-Nevada, U.S. Fish and Wildlife Service.

[FR Doc. 79-12353 Filed 4-20-79; 8:45 am]

BILLING CODE 4310-55-M

Fish and Wildlife Service

50 CFR Part 32

Hunting; Opening of the Kodiak National Wildlife Refuge, Alaska

AGENCY: U.S. Fish and Wildlife Service, Department of the Interior.

ACTION: Special Regulations.

SUMMARY: The Director has determined that the opening to hunting of the Kodiak National Wildlife Refuge, Alaska, is compatible with objectives for which this area was established, will utilize a renewable national resource, and will provide additional recreational opportunities to the public. This document establishes special regulations effective for the upcoming hunting season for hunting big game, including Alaska brown bear, mountain goat, reindeer, and Sitka black tail deer.

EFFECTIVE DATE: These regulations are effective from publication date through January 15, 1980.

FOR FURTHER INFORMATION CONTACT: Robert L. Delaney, Refuge Manager, Kodiak National Wildlife Refuge, P.O. Box 825, Kodiak, Alaska 99615, (907) 486–3325.

SUPPLEMENTARY INFORMATION: The primary author of this document is Robert L. Delaney. The Refuge Recreation Act of 1962 (16 U.S.C. 460K) authorizes the Secretary of the Interfor to administer such areas for public recreation as an appropriate incidental or secondary use only to the extent that it is practicable and not inconsistent with the primary objectives for which the area was established. In addition, the Refuge Recreation Act requires: (1) That any recreational use permitted will not interfere with the primary purpose for which the area was established; and (2) that funds are available for the development, operation, and maintenance of the permitted forms of recreation. The recreational use authorized by these regulations will not interfere with the primary purpose for which the area was established; and (2)

that funds are available for the development, operation, and maintenance of the permitted forms of recreation. The recreational use authorized by these regulations will not interfere with the primary purposes for which the Kodiak National Wildlife Refuge was established. This determination is based upon consideration of, among other things, the Service's Final Environmental Statement on the Operation of the National Wildlife Refuge System published in November 1976. Funds are available for the administration of the recreational activities permitted by these regulations.

§ 32.32 Special regulations; big game; for individual wildlife refuge areas.

Kodiak National Wildlife Refuge, Alaska

Sport hunting of big game, including brown bear, mountain goat, reindeer, Sitka black tail deer, is permitted on the Kodiak National Wildlife Refuge, Alaska. Sport hunting shall be in accordance with all applicable state and federal regulations, subject to the following special regulations: (1) The use of airboats and jetboats is prohibited on all waters of the Kodiak National Wildlife Refuge; (2) the landing, take off, and operation of fixed wing aircraft under other than emergency conditions is permitted on water areas only; (3) hunters intending to enter lands of the Kodiak National Wildlife Refuge which have been coveyed to individual village corporations under the terms of the Alaska Native Claims Settlement Act should contact the appropriate individual village corporation for permission to enter said lands. Maps of the village lands and corporation addresses are available from Refuge Manager, Kodiak National Wildlife Refuge, Box 825, Kodiak, Alaska 99615. The provisions of this special regulation supplement the regulations governing hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

Dated: March 30, 1979.

Keith Schreiner,

Alaska Area Director, U.S. Fish and Wildlife Service.

[FR Doc. 79-12525 Filed 4-20-79; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 44, No. 79
Monday, April 23, 1979

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 981]

Handling of Almonds Grown in California; Reporting and Quality Control

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule makes several changes in the administrative rules and regulations pertaining to reporting and quality control to standardize reporting and relieve unnecessary burdens on almond packers.

DATES: Written comments to this proposal must be received by May 4, 1979.

ADDRESSES: Written comments should be submitted in duplicate to the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Charles R. Brader (202) 447–4722.

SUPPLEMENTARY INFORMATION: Notice is given to amend Subpart-Administrative Rules and Regulations (7 CFR 981–441–981.474; 43 FR 47969, 56012) by revising §§ 981.442, 981.455 and 981.472. The subpart is issued under the marketing agreement, as amended, and Order No. 981, as amended (7 CFR Part 981), regulating the handling of almonds grown in California. The marketing agreement and order are collectively referred to as the "order". The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The proposals are based on a recommendation of the Almond Board of California.

Selection 981.42 of the order provides for each handler to cause to be determined, through the inspection agency, and at the handler's expense, the percent of inedible kernels in each variety of almonds received by him, and report this determination to the Board. The quantity of inedible kernels in each variety in excess of two percent [1] of the kernel weight received, constitutes a weight obligation to be accumulated in the course of processing and shall be delivered to the Board, or Board accepted crushers, feed manufacturers, or feeders. Section 981.42 also authorizes the Board, with the approval of the Secretary, to establish rules and regulations necessary and incidental to the administration of this provision. Section 991.442 of the administrative rules and regulations implements § 981.42.

Section 981.442 provides, among other things, for each handler to report to the Board the quantity of almonds received from growers. However, that section does not provide adjustment for excess moisture in those receipts. Moreover, the order and the administrative rules and regulations do not define "excess moisture". Based on several years' operation under this section, the Board has found that, while handlers may be making adjustments for excess moisture in reporting their receipts of almonds to the Board and to growers, these adjustments are not always uniform and to that extent, the information reported by handlers may not be uniform.

Therefore, the proposal is to add a new § 981.401, defining "adjusted kernel weight" in paragraph (a) of that section. For clarity, paragraph (b) of that section would contain an example demonstrating how the "adjusted kernel weight" would be computed. Except for Peerless bleaching stock, "adjusted kernel weight" would mean the actual gross weight of any lot of almonds: Less weight of containers; less moisture of kernels in excess of five percent; less shells, if applicable; and less trash or other foreign material. The adjusted kernel weight would be determined by sampling certified by the inspection agency. Peerless bleaching stock is shipped as unshelled almonds and the adjusted kernel weight of these almonds would be 35 percent of the clean bleachable weight. This is the shelling ratio prescribed in the order for determining the kernel weight of unshelled Peerless almonds.

To achieve uniformity, in reporting receipts of almonds, it is proposed that §§ 981.442(a)(3) and (4) and 981.472(a) and (b) be revised so that handler receipts would be reported by them on an adjusted kernel weight basis. In addition, since proposed § 981.401(b) would set forth the manner in which the adjusted kernel weight would be computed, the provision in § 981.442(a)(3) allowing for shellout loss is unnecessary and would be deleted.

Section 981.455 provides for transfers of almonds and reserve credits from one handler to another. However, it does not provide for transfers of a handler's disposition obligation pursuant to § 981.42(a).

A handler may resell an unsorted lot of almonds to another handler. In that case, it is inequitable to require the transferring handler to meet the disposition obligation, especially since, in transferring the lot, he has divested himself of that portion of the lot which created the obligation and would be removed in the course of processing. It is therefore proposed that § 981.455 be amended by the addition of a new paragraph (c) prescribing procedures for such transfers. Paragraph (c) would permit transfer of inedible obligation, with the approval of the Board, only when the inedible kernels are physically transferred with the entire lot of almonds. Such a transfer would have to be reported to the Board.

Section 981.442(a)(5) provides that each handler meet his disposition obligation by delivering packer pickouts and other inedible kernel material to nonhuman consumption outlets, if the inspection agency of the Board has sampled the deliveries. However, for handlers who only deliver very small quantities for disposition credit, the cost is a disproportionate burden, often requiring considerable time and effort by the inspection agency and the handler. Therefore, the proposal is to amend § 981.442(a)(5) by providing that in the case of a handler having an annual total obligation of less than 1,000 pounds, delivery may be to the Board in lieu of an accepted user, in which case the Board would certify the disposition and report the results to the USDA.

[1] This percentage has been changed to one and one-half percent (42 FR 56487), except for the 1978–79 crop year (ending June 30, 1978), the percentage is three percent (43 FR 56012).

The proposals to amend Subpart-Administrative Rules and Regulations (7 CFR 981.441–981.474; 43 FR 47969, 56012) are as follows:

1. Section 981.401 is added to read as follows:

§ 981.401 Adjusted kernel weight.

(a) *Definition.* Except for Peerless bleaching stock, "adjusted kernel weight" shall mean the actual gross weight of any lot of almonds: Less weight of containers; less moisture of kernels in excess of five percent; less shells, if applicable; and less trash or other foreign material. The adjusted kernel weight shall be determined by sampling certified by the inspection agency. The kernel weight of Peerless bleaching stock shall be 35 percent of the clean bleachable weight.

(b) *Computation.* Except for Peerless bleaching stock, the computation of adjusted kernel weight shall be in the manner shown in the following example. The example is based on the analysis of a 1,000 gram sample taken from a lot of almonds weighing 10,000 pounds. The sample contains the following: edible kernels, 530 grams; inedible kernels, 120 grams; foreign materials, 350 grams; and moisture content of kernels, seven percent. Excess moisture is two percent. The sample computation is as follows:

	Percent of sample	Weight (pounds)
1. Actual gross weight of delivery		10,000
2. Percent of edible kernel weight	53.00	
3. Less excess moisture of edible kernels (excess moisture x line 2)	1.06	
4. Net percent shell out (line 2—line 3)	51.94	
5. Net edible kernels (line 4 x line 1)		5,194
6. Total percent of inedible kernels (from sample)	12.00	
7. Less excess moisture of inedible kernels (excess moisture from sample x line 6)	.24	
8. Net percent inedible kernels (line 6—line 7)	11.76	
9. Total inedible kernels (line 8 x line 1)		1,176
10. Adjusted kernel weight (line 5 + line 9)		6,370

2. Section 981.442(a)(3)—(a)(5) are revised to read as follows:

§ 981.442 Quality Control.

(a) * * *

(3) *Analysis of Sample.* Each sample shall be analyzed by or under the surveillance of the inspection agency to determine the kernel content and the proportion of inedible kernels in the sample. The inspection agency shall prepare a report for each handler showing, by variety, the total adjusted kernel weight received by the handler, the inedible kernel weight, and any other information as the Board may prescribe. The report shall cover the handler's daily receipts or the handler's total receipts during a period not exceeding one month, and shall be submitted by the inspection agency to the Board and the handler.

(4) *Disposition obligation.* The weight of inedible kernels in excess of one and one-half percent of the adjusted kernel weight reported to the Board of any variety received by a handler shall constitute his disposition obligation, except for the 1978–79 crop year ending June 30, 1979, this percentage shall be three percent. If a varity other than Peerless is used as bleaching stock, the weight so used may be reported to the Board and the disposition obligation for that variety reduced proprotionately.

(5) *Meeting the disposition obligation.* Each handler shall meet his disposition obligation by delivering packer pickouts, kernels rejected in blanching, pieces of kernels, meal accumulated in manufacturing, or other material, to crushers, feed manufacturers, feeders, or dealers in nut wastes, on record with the Board as Accepted Users. In the case of a handler having an annual total obligation of less than 1,000 pounds, delivery may be to the Board in lieu of an accepted user, in which case the Board would certify the disposition lot and report the results to the USDA. For dispositions by handlers with the mechanical sampling equipment, samples may be drawn by the handler in a manner acceptable to the Board and the inspection agency. For all other dispositions, samples shall be drawn by or under the supervision of the inspection agency. Upon approval by the Board and the inspection agency, sampling may be accomplished at the accepted user's destination. The almond meat content of each delivery shall be reported to the Board and the handler and credited to the handler's disposition obligation. Each handler's disposition obligation shall be satisfied when the almond meat content of the material delivered to accepted users equals the disposition obligation, but no later than July 31 succeeding the crop year in which the obligation was incurred.

* * * * *

3. Section 981.455(c) is added to read as follows:

§ 981.455 Interhandler transfers.

* * * * *

(c) Transfer of inedible obligation may be made, with the approval of the Board, only when the inedible kernels are physically transferred with the entire lot of almonds. The transfer of the lot shall be reported on ABC Form 9, showing date of transfer and, for the transferring handler, the (1) original inspection certificate number, (2) total weight shown on the certificate, and (3) weight of inedible kernels shown on the certificate. For the receiving handler, ABC Form 9 shall show the (1) new inspection certificate number, (2) total weight shown on the certificate, and (3) weight of inedible kernels shown on the certificate. ABC Form 9 shall be signed by both, the transferring handler and the receiving handler, and submitted by the transferring handler to the Board for approval.

4. Section 981.472 is revised to read as follows:

§ 981.472 Report of almonds received.

(a) Each handler shall report to the Board on ABC Form 1 the total adjusted kernel weight of almonds, by varieties, received by him for his own account within any of the hereinafter prescribed reporting periods. Each such report shall be filed with the Board within five (5) business days after the close of the applicable one of the following reporting periods:

July 1 to August 31, September 1 to September 15, September 16 to September 30, October 1 to October 15, October 16 to October 31, November 1 to November 15, November 16 to November 30, December 1 to December 31, January 1 to March 31, April 1 to June 30.

(b) For the reporting periods July 1 through December 31, and January 1 through March 31, each handler shall submit a summary report to the Board, within 30 days after the end of the reporting period, which shall show the adjusted kernel weight of almonds received for the handler's own account by county of production and such varieties as may be requested by the Board.

This regulation has not been determined significant under the USDA criteria implementing Executive Order 12044.

Dated: April 18, 1979.

D. S. Kuryloski,

Acting Director, Fruit and Vegetable Division.

[FR Doc. 79-12499 Filed 4-20-79; 8:45 am]

BILLING CODE 3410-02-M

[7 CFR Part 1260]

Beef Research and Information Order; Hearing on Proposed Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Public hearing on proposed rulemaking.

SUMMARY: This noticed hearing is being held to consider a proposed Beef Research and Information Order,

submitted by the Beeferendum Advisory Group, that would establish a nationally coordinated program of research and information to develop and improve markets for cattle, beef, and beef products. Such a program would be financed by value-added assessments of up to five-tenths of one percent of the value of cattle sold. The proposed order limits the assessment to not more than two-tenths of one percent for the first two years of the program. The program would be administered by a Beef Board Composed of up to 68 producer members appointed by the Secretary of Agricuture from nominations submitted by certified organizations. A group representing a coalition of beef industry organizations requested a hearing on the proposed order. Proponents contend that a nationally coordinated program of beef research and information is needed to establish an effective and continuous program of research, consumer information, producer information and promotion; to stabilize marketing conditions; to strengthen the cattle and beef industry's position in the marketplace; and to maintain and expand domestic and foreign markets for United States beef.

DATES: The hearing sessions will be held beginning on June 12, 19, 21, 26, and 28 at five locations listed under "Supplementary Information."

ADDRESSES: Hearing sessions will be held at five locations beginning on the dates listed below:

1. June 12, 1979—Earle Cabell Federal Building, Room 7A23, 1100 Commerce Street, Dallas, TX 75242.
2. June 19, 1979—Federal Building, Room 1112, 1000 Liberty Avenue, Pittsburgh, PA 15222.
3. June 21, 1979—Ramada Inn, 845 N. Central Avenue, Hapeville, GA 30354 (near Atlanta airport).
4. June 26, 1979—Scrugham Engineering Mines Building, Room 101, Reno Campus University of Nevada, Reno, NV 89507.
5. June 28, 1979—Henry A. Wallace Building, Auditorium, East 9th and Grand Avenue, Des Moines, IA 50319.

Each day's session will begin at 9 a.m., local time, unless the judge otherwise specifies during the course of the hearing. Any of the sessions may be continued beyond 1 day if necessary.

FOR FURTHER INFORMATION, CONTACT: Ralph L. Tapp, Livestock, Poultry, Grain and Seed Division, AMS, USDA, Washington, D.C. 20250, Phone: 202–447–3970.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public hearing on a proposed national beef research and information order. The hearing is called pursuant to the provisions of the Beef Research and Information Act (7 U.S.C. 2901 et seq.), as amended, and in accordance with the applicable rules of practice and procedure governing proceedings to formulate such an order (7 CFR Part 1260). The public hearing is for the purpose of:

(a) Receiving evidence with respect to the economic and marketing conditions which relate to the proposed order set forth herein and to any appropriate modifications thereof;

(b) Determining the extent of need for an order to implement a nationally coordinated beef research and information program; and

(c) Determining whether provisions specified in the proposed order or some other provisions appropriate to the terms of the Beef Research and Information Act (7 U.S.C. 2901 et seq.), as amended, will tend to effectuate the declared policy of the Act.

In addition, the following matters should also be addressed at the hearing:

(a) The nature of potential programs and projects with expected benefits to producers and consumers;

(b) The expected economic and social impacts of such programs and the expected distribution of these impacts on the segments of industry and public affected;

(c) The probable quantitative impacts of alternative assessment levels on costs and benefits; and

(d) The ability of similar programs in other commodities to improve efficiency, productivity, nutrition, diets and strengthen the industry's position in the market place.

A press release issued by the Department on March 8, 1979, announced that a proposed Beef Research and Information Order had been received from a beef industry group. The public was invited to suggest changes in the industry proposal or to submit other proposals by April 5. Only one respondent suggested changes in the beef industry proposal. Those changes are included in this hearing notice as Proposal No. 2.

The proposed order, set forth below, has not received the approval of the Secretary of Agriculture.

Proposed by the Beeferendum Advisory Group

Proposal No. 1

The provisions of the order should read as follows:

PART 1260—BEEF RESEARCH AND INFORMATION

Subpart—Beef Research and Information Order

Definitions

Sec.

Research, Information, Education, and Promotion

State Beef Councils

Expenses and Assessments

Reports, Books, and Records

Certification of Organizations

Miscellaneous

Authority: Beef Research and Information Act (7 U.S.C. 2901 et seq.).

Subpart—Beef Research and Information Order

Definitions

§ 1260.101 Secretary.

"Secretary" means the Secretary of Agriculture or any other officer or employee of the Department of Agriculture to whom there has heretofore been delegated, or to whom there may hereafter be delegated the authority to act in his stead.

§ 1260.102 Department.

"Department" means the United States Department of Agriculture, the Secretary of Agriculture or any officer or employee of the Department of Agriculture who has been delegated or may be delegated the authority to act for the Department of Agriculture on a particular matter under this subpart.

§ 1260.103 Act.

"Act" means the Beef Research and Information Act (7 U.S.C. 2901 et seq.) and any amendments thereto.

§ 1260.104 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other entity.

§ 1260.105 Cattle.

"Cattle" means live domesticated bovine quadrapeds.

§ 1260.106 Beef.

"Beef" means the flesh of cattle.

§ 1260.107 Beef products.

"Beef products" means products produced in whole or in part from cattle, exclusive of milk and products made therefrom.

§ 1260.108 Fiscal period.

"Fiscal period" is the 12-month budgetary period and means the USDA's fiscal year unless the Beef Board, with the approval of the Department, selects some other 12-month period.

§ 1260.109 Beef Board or Board.

"Beef Board" or "Board" or other designatory term adopted by such Board means the administrative body established pursuant to § 1260.136.

§ 1260.110 Executive Committee.

"Executive Committee" means those members of the Beef Board, eleven in number, who are elected by the Board to adminster the provisions of the subpart under the supervision of the Board and within the policies determined by the Board.

§ 1260.111 Producer.

"Producer" means any person who owns or acquires ownership of cattle other than one who acquires cattle solely for the purpose of slaughter: *Provided,* That a person shall not be considered to be a producer if his only share in the proceeds of a sale of cattle or beef is a sales commission, handling fee, or other service fee.

§ 1260.112 Producer-buyer.

"Producer-buyer" means a producer who buys cattle.

§ 1260.113 Producer-seller.

"Producer-seller" means a producer who sells cattle.

§ 1260.114 Slaughterer.

"Slaughterer" means any person who slaughters cattle including cattle of his own production.

§ 1260.115 United States.

"United States" means the 50 States of the United States of America and the District of Columbia.

§ 1260.116 Marketing.

"Marketing" means the sale or any other disposition of cattle, beef of beef products in any channel of commerce.

§ 1260.117 Commerce.

"Commerce" means interstate, foreign, or intrastate commerce.

§ 1260.118 Producer organization or eligible organization.

"Producer organization" or "eligible organization" means any organization which has been certified pursuant to this subpart.

§ 1260.119 Producer information.

"Producer information" means facts, data, and other information that will assist producers in making decisions that lead to increased efficiency, lower cost of production, a stable supply of cattle, and the development of new markets.

§ 1260.120 Consumer information.

"Consumer information" means facts, data, and other information that will assist consumers and other persons in making evaluations and decisions regarding the purchasing, preparation, and utilization of beef and beef products.

§ 1260.121 Promotion.

"Promotion" means any action, including paid advertising, to advance the image or desirability of beef and beef products.

§ 1260.122 Research.

"Research" means any type of systematic study or investigation to advance the desirability, marketability, production, or quality of cattle, beef, and beef products, and includes the evaluation of such studies or investigations.

§ 1260.123 Transaction.

"Transaction" means any transfer of ownership of cattle or beef through a sale, trade, or other means of exchange.

§ 1260.124 Contracting party.

"Contracting party" means any person, public or private, with which the Beef Board may enter into a contract or agreement pursuant to § 1260.146(c).

§ 1260.125 Marketing year.

"Marketing year" means the calendar year ending on December 31 or any other consecutive 12-month period designated by the Board, with the approval of the Department.

§ 1260.126 Part and subpart.

"Part" means 7 CFR Part 1260, containing rules, regulations, orders, supplemental orders, and similar matters concerning the Beef Research and Information Act. "Subpart" refers to any portion of segment of this part.

Beef Board

§ 1260.136 Establishment and membership.

There is hereby established a Beef Board composed of not more than 68 individuals who are producers, each of whom shall have an alternate, selected by the Secretary from nominations submitted by eligible producer organizations certified pursuant to § 1260.176 or by producers in a manner to be prescribed under § 1260.138(a).

§ 1260.137 Term of office.

The members of the Board and their alternates shall serve for terms of three years, except members of the initial Board shall serve, proportionately, for terms of one, two and three years. Each member and alternate member shall continue to serve until his successor is selected and has accepted. No member or alternate member shall serve more than six consecutive years: *Provided,* That those members and alternate

members serving initial terms of one or two years are eligible to serve two additional consecutive terms.

§ 1260.138 Nominations.

All nominations to the Beef Board authorized under § 1260.136 shall be made in the following manner:

(a) Within 90 days of the announcement of approval of this Order, or a longer period if so prescribed by the Department, nominations shall be submitted to the Department for each member and each alternate member to be selected for each geographic area as specified in paragraph (d) of this section by eligible organizations certified pursuant to § 1260.176: *Provided,* That if there is no eligible organization certified for a geographic area, or if the Department determines that a substantial number of producers are not members of, or their interests are not represented by, any such eligible organization, then nomination shall be submitted in a manner authorized by the Department;

(b) After the establishment of the Board the nominations for subsequent Board members and alternates shall be sumbitted to the Department not less than 60 days prior to the expiration of the terms of the members and alternates whose terms are expiring;

(c) Where there is more than one eligible organization within a geographic area, they shall caucus for the propose of jointly nominating qualified individuals who are producers to be members and alternate members of the Board. If any eligible organization does not agree with the decision reached by the majority of eligible organizations in such caucus, such eligible organization may submit to the Department nominations for each selection to be made.

(d) For purposes of nominating members and their alternates to the Board, the United States shall be divided into geographic areas so as to reflect as nearly as possible the number of cattle in each geographic area proportionate to the total number of cattle in the United States: *Provided,* That each designated geographic area shall be entitled to at least one member on the Board and one alternate member;

(e) The initial geographic areas and the number of members and alternates on the Beef Board from each area shall be: Alabama 1, Arizona 1, Arkansas 1, California 2, Colorado 2, Florida 1, Gorrgia 1, Idaho 1, Illinois 1, Indiana 1, Iowa 3, Kansas 3, Kentucky 1, Louisiana 1, Michigan 1, Minnesota 2, Mississippi 1, Missouri 3, Montana 1, Nebraska 3, New Mexico 1, New York 1, North Carolina 1, North Dakota 1, Ohio 1, Oklahoma 2, Oregon 1, Pennsylvania 1, South Carolina 1, South Dakota 2, Tennessee 1, Texas 6, Utah 1, Virginia 1, West Virginia 1, Wisconsin 2, Wyoming 1. Additional geographic areas, comprised of combined States, shall be: Nevada–Hawaii 1, Washington–Alaska 1, Maryland–Delaware–New Hamphire–Massachusetts–Rhode Island–Connecticut 1; and

(f) After the establishment of the Board, the geographic areas and apportionment of members and alternates provided for in paragraphs (d) and (e) of this section shall be reviewed periodically, and at least every five years. The Board shall redefine the geographic areas and reapportion the membership of the Board, with approval of the Department, if it finds that the existing geographic areas are not properly represented in proportion to cash assessments, cash receipts for cattle, cattle numbers, and other related factors: *Provided,* That each such area shall be represented by at least one Board member.

§ 1260.139 Selection of Members and Alternates.

From the nominations made pursuant to §§ 1260.136 and 1260.138, the Secretary shall select the members of the Board and an alternate for each member on the basis of the representation provided for in §§ 1260.136, 1260.137, and 1260.138.

§ 1260.140 Acceptance.

Any nominee selected to be a member or an alternate member of the Board shall notify the Department of his acceptance in writing.

§ 1260.141 Vacancies.

To fill any vacancies occasioned by the death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be nominated and selected in a manner specified in §§ 1260.136, 1260.137, 1260.138, and 1260.140, except that replacement of a Board member or alternate with an unexpired term of less than six months is not necessary.

§ 1260.142 Alternate members.

An alternate member of the Board, during the absence of the member for whom he is the alternate, shall act in the place and stead of such member at Board meetings and perform such other duties as assigned. In the event of the death, removal, resignation, or disqualification of a member, his alternate shall act for him at Board meetings until a successor for such member is selected.

§ 1260.143 Procedure.

(a) A majority of the members of the Board, including alternates acting for members of the Board, shall constitute a quorum, and any action of the Board shall require the concurring votes of at least a majority of those present and voting. At assembled meetings all votes shall be cast in person.

(b) For matters which do not require deliberation and the exchange of views, and in matters of an emergency nature when there is not enough time to call an assembled meeting of the Board, the Board may also take action upon the concurring votes of a majority of its members by mail, telegraph, or telephone, but any such telephone vote shall be confirmed promptly in writing.

§ 1260.144 Compensation and reimbursement.

The members of the Board and alternates shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their duties under this subpart.

§ 1260.145 Powers of the Board.

The Board shall have the following powers: (a) To supervise the administration of this subpart in accordance with its terms and conditions, (b) To make rules and regulations to effectuate the terms and provisions of this subpart; (c) To receive, investigate, and report to the Department complaints of violations of the provisions of this subpart; and (d) To recommend to the Department amendments to this subpart.

§ 1260.146 Duties of the Board.

The Board shall have the following duties:

(a) To meet and organize and to select from among its members a chairman and such other officers as may be necessary, to select committees and subcommittees of Board members, and to adopt such rules for the conduct of its business as it may deem advisable. The Board also may establish advisory groups of persons other than Board members;

(b) To appoint from its members an Executive Committee, consisting of 11 members, and to delegate to the Committee authority to employ a staff and administer the terms and provisions of this subpart under the direction of the Beef Board and within the policies determined by the Board. For purposes of determining the membership of the Executive Committee, the Board shall

divide the United States into six, seven or eight regions on the basis of cattle population, each region to consist of one or more whole states. The members of the Beef Board from each region shall select one nominee for the Executive Committee from among themselves, and such nominee shall become a member of the Executive Committee upon confirmation by the Beef Board. The remaining members of the Executive Committee shall be selected by the Beef Board to serve as at-large members: *Provided,* That there shall be no more than two members of the Executive Committee from a region at any time. Initially, there shall be eight geographic regions and three at-large members of the Executive Committee. The Beef Board shall periodically review the geographic regions and may increase or decrease the number of regions within the limits set forth above;

(c) To develop and submit to the Department plans or projects, together with the Board's recommendations with respect to the approval thereof;

(d) To prepare and submit to the Department for its approval budgets on a fiscal period basis of its anticipated expenses and disbursements in the administration of this subpart, including probable costs of each research, information, advertising, promotion, and developmental plan or project. The Board shall also submit informational copies of such budgets to the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition and Forestry;

(e) To enter into contracts or agreements, with the approval of the Department, with appropriate contacting parties, including State beef councils, for the development and carrying out of the projects of the Board as authorized by § 1260.151, and for the payment of the costs thereof with funds accruing pursuant to the administration of this subpart: *Provided,* That nothing in this subpart shall preclude the Board from conducting projects or activities on its own to effectuate the intent and purposes of the Act. Any such contract or agreement shall also provide that such contracting parties shall develop and submit to the Board a plan or project, together with a budget or budgets which shall show the estimated cost to be incurred for such plan or project, and that any such plan or project shall become effective upon approval by the Secretary. Any such contract agreement shall also require the contracting parties to keep accurate records of all of their activities with respect to the contract or agreement, to make periodic reports to the Board of activities carried out, to identify funds received from the Beef Board and not to use these funds to finance unrelated activities of the contracting party or its affiliated organizations, to account for funds received and expended, and to report to the Department or Board as required. The Beef Board shall endeavor to provide the widest possible dissemination among producers of any supply, demand or other economic information or analysis if such information or analysis is developed pursuant to such contracts, unless the contract provides that such information be kept confidential;

(f) To maintain books and records and prepare and submit reports from time to time to the Department as it may prescribe and to make appropriate accounting with respect to the receipt and disbursement of all funds entrusted to it;

(g) To periodically prepare and make public and to make available to producers reports of activities carried out and at least each fiscal period to make public an accounting for funds received and expended;

(h) To cause its books to be audited by a public accountant at least once each fiscal period and at such other times as the Department may request and to submit a copy of each such audit to the Department;

(i) To give the Department the same notice of meetings of the Board as is given members in order that Department representatives may attend such meetings; and

(j) To submit to the Department such information pertaining to this subpart as it may request.

Research, Information, Education, and Promotion

§ 1260.151 Research, information, education, and promotion.

(a) The Beef Board shall in the manner prescribed in § 1260.146 provide for:

(1) The establishment, issuance, effectuation, and administration of plans or projects for advertising promotion, education, producer information, consumer information and public relations with respect to the use of cattle, beef, and beef products and for the disbursement of necessary funds for such purposes;

(2) The establishment and carrying on of research, market development projects, and studies with respect to the production, sale, processing, distribution, marketing, or utilization of cattle, beef, and beef products and the creation of new beef products, in accordance with section 7(b) of the Act, to the end that the production, marketing, and utilization of cattle, beef, or beef products may be encouraged, expanded, improved, or made more efficient and/or acceptable and the data collected by such activities may be disseminated, and for the disbursement of necessary funds for such purposes; and

(3) The development and expansion of foreign markets and uses for cattle, beef, or beef products.

(b) Each program or project authorized under paragraph (a) of this section shall be periodically evaluated by the Board to insure that each plan or project contributes to an effective and coordinated program of research, information, education, and promotion. If the Board finds that a program or project does not further the purposes of the Act, then the Board shall terminate such program or project.

(c) No reference to a private brand or trade name shall be made unless the Department determines that such reference will not result in undue discrimination against the cattle, beef, or beef products of other persons in the Unitd States. No such advertising, consumer education, or sales promotion programs shall make use of false or misleading claims in behalf of cattle, beef, or beef products, or false or misleading statements with respect to quality, value, or use of any competing product.

State Beef Councils

§ 1260.156 Continuity.

The Beef Board shall allocate (a) up to 10 percent of net assessments from a State, or (b) an amount equal to a State beef promotion entity's collections for the 12 months preceding approval of this order, less a deduction of one-half of refunds of the assessments collected under this order to producers in that State, for use during the next fiscal year by a State beef council, beef board, or other beef promotion entity which makes a request for such funds and which meets the qualifications specified in § 1260.157: *Provided,* That during the first year, if the Beef Board chooses to allocate up to 10 percent of net assessments from a State, the Beef Board may estimate the net assessments from a State and upon request from such entity provide up to 10 percent of estimated net assessments. Net assessments from a State shall be computed by deducting the refunds to producers in that State from the assessments collected from producers in that State.

§ 1260.157 Qualifications.

To qualify for the receipt of funds pursuant to § 1260.156, a State beef board, beef council, or other beef promotion entity shall (a) be organized pursuant to legislative authority within the State or be organized by State charter, (b) have goals and purposes complementary to the goals and purposes of the Act, and (c) demonstrate ability to provide research, information, education, or promotion consistent with the Act and this subpart. A request from a State beef promotion entity for such funds shall include plans or projects and estimated costs of activities for which the funds will be used, in accordance with the requirements of § 260.146(e). The contract or agreement for such funds shall provide that the State promotion entity shall keep accurate records of all activities with respect to the contract or agreement and make periodic reports to the Board of activities carried out, an accounting for funds received and expended, and such other reports as the Board or the Department may require. In no event shall more than one such entity qualify within a State. If more than one entity applies for qualification within a State, the Beef Board shall choose, subject to the approval of the Department, the one most qualified to fulfill the purposes of the Act and this subpart.

Expenses and Assessments

§ 1260.161 Expenses.

(a) The Board is authorized to incur such expenses as the Department finds are resonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and performs its duties in accordance with the provisions of this subpart. Such expenses shall be paid from assessments received pursuant to § 1260.162 and other funds available to the Board.

(b) The Board shall reimburse the Department, from producer assessments, for all the expenses and expenditures, excluding salaries, which were incurred by the Government in the preparation of an original order and the conduct of the referendum considering its approval.

(c) The Board shall reimburse the Department, from producer assessments, from administrative costs, including salaries, which are incurred by the Government with respect to this subpart.

§ 1260.162 Assessments.

(a) Each producer-seller, upon sale or transfer of ownership of any cattle, except as provided below, shall pay to the producer-buyer or slaughterer thereof, pursuant to regulations issued by the Board, and such producer-buyer or slaughterer shall collect from the producer-seller an assessment based on the value of the cattle involved in the transaction as follows:

(1) The Beef Board, with the approval of the Department, shall set the amount of assessment, not to exceed five-tenths of 1 percent of the sale price;

(2) The assessment rate for the first two years shall not exceed two-tenths of 1 percent of the sale price;

(3) In the event that no sales transaction occurs at the point of slaughter or other transfer, a fair commercial market value shall be attributed to the cattle for the purpose of determining the assessment;

(4) Cattle slaughtered for his own home consumption for a producer who has been the sole owner of such cattle shall not be subject to assessments provided in this subpart;

(5) In order that assessments be based on commercial market value for beef, the Beef Board shall, insofar as practical, exempt until time of slaughter the collection of assessments on breeding cattle and on cattle used for commercial milk production, when validly designated as such by the producer-seller under procedures specified by the Beef Board;

(6) Each slaughterer shall remit assessment(s) collected to the Beef Board at such times and in such manner as prescribed by regulations issued by the Board, including any assessment(s) due at time of slaughter on cattle of his own production;

(7) Failure of the slaughterer to collect the assessment(s) on each animal shall not relieve the slaughter of his obligation to remit the assessment(s) to the Beef Board as required in this subpart;

(8) The Beef Board may prescribe a standard statement for bills of sale and invoices which shall make such documents conclusive evidence that the assessment has been paid; and

(9) The Beef Board may collect directly from any producer any assessment(s) which he collected under the provisions of this subpart or which were otherwise due which were not passed along in the manner set forth in this subpart due to the loss in value of the cattle or due to the export of the cattle or due to other reasons.

(b) The Beef Board may accumulate a reasonable reserve of approximately the average yearly collections to maintain continuity of programs and fulfill other obligations and expenses.

(c) The Secretary may maintain a suit in the several district courts of the United States against any person subject to the Order for the collection of any assessment due pursuant to this section.

§ 1260.163 Producer refunds.

Any producer-seller on whose cattle an assessment is made and collected from him under the authority of the Act shall have the right to demand and receive from the Beef Board a refund of such assessment upon submission of proof satisfactory to the Board that the producer-seller paid the assessment for which refund is sought. Any such demand shall be made by such producer-seller in accordance with regulations and on a form prescribed by the Board and approved by the Department. Such demands shall be made within 60 days after the end of the month in which the transaction occurred upon which the refund is based. Refund shall be made within 60 days after the submission of proof satisfactory to the Board that the producer-seller paid the assessment for which refund is sought: *Provided*, That no producer shall claim or receive a refund of any portion of an assessment which he collected from other producers.

§ 1260.164 Influencing governmental action.

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action except as provided in this subpart.

Reports, Books and Records

§ 1260.171 Reports.

Each slaughterer subject to this subpart shall be required to report to the Beef Board periodically such information as may be required by regulations established by the Board.

§ 1260.172 Books and records.

Each slaughter shall maintain and make available for inspection by the Beef Board and the Department such books and records as are necessary to carry out the provisions of this subpart and the regulations issued thereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the marketing year of their applicability.

§ 1260.173 Confidential treatment.

All information obtained from the books, records, or reports required to be maintained under §§1260.171 and 1260.172 and all information obtained by the Beef Board pertaining to producer

refunds made pursuant to §1260.163 shall be kept confidential by all employees of the Beef Board, all employees of the Department, and all officers and employees of contracting parties, and only such information so furnished or acquired as the Secretary deems relevant shall be disclosed by them, and then only in a suit or administrative hearing brought at the direction, or upon the request, of the Secretary, or to which any officer of the United States is a party, and involving this subpart: *Provided, however,* That nothing in this subpart shall be deemed to prohibit (a) the issuance of general statements based upon the reports of the number of persons subject to this subpart or statistical data collected therefrom, which statements do not identify the information furnished by any person, (b) the publication of general statements relating to refunds made by the Beef Board during any specific period, which statements do not identify any person to whom refunds are made, or (c) the publication by direction of the Secretary of the name of any person violating this subpart, together with a statement of the particular provisions violated by such person.

Certification of Organizations

§ 1260.176 Certification of organizations.

(a) Any producer organization within a geographic area designated pursuant to §1260.138 may request the Department to certify its eligibility to represent cattle producers to participate in nominating members and alternate members to represent such geographic area on the Beef Board. Such eligibility shall be based, in addition to other available information, upon a factual report submitted by the organization which shall contain information deemed relevant and specified by the Department for the making of such determination, including but not limited to the following:

(1) Geographic area covered by the organization's active membership;

(2) Nature and size of the organization's active, annual dues-paying membership, proportion of total of such active membership accounted for by producers of cattle, and the volume of cattle produced by the organization's active membership in each such State or applicable geographic area(s);

(3) The extent to which the cattle producer membership of such organization is represented in setting the organization's policies;

(4) Evidence of stability and permanency of the organization;

(5) Sources from which the organization's operating funds are derived;

(6) Functions of the organization; and

(7) The organization's ability and willingness to further the aims and objectives of the Act.

(b) The primary consideration in determining the eligibility of an organization shall be whether its producer membership consists of a substantial number of producers who produce a substantial volume of cattle in the geographic area subject to the provisions of this subpart.

(c) The Department shall certify any organization which it finds to be eligible under this section and its determination shall be final. After the original certification of an organization, such organization shall request recertification at any time it wishes to nominate a member to the Board and the Department may require recertification at any time.

Miscellaneous

§ 1260.181 Patents, copyrights, inventions, and publications.

Any patents, copyrights, inventions, or publications developed through the use of funds collected under the provisions of this subpart shall be the property of the U.S. Government as represented by the Beef Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the cattle industry. Upon termination of this subpart § 1260.183 applies to determine disposition of all such property.

§ 1260.182 Suspension and termination.

(a) The Secretary shall, whenever he finds that this subpart or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, terminate or suspend the operation of this subpart or such provision.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of 10 percent or more of the number of cattle producers voting in the referendum approving this subpart, to determine whether cattle producers favor the termination or suspension of this subpart, and the Secretary shall suspend or terminate such subpart six months after he determines that its suspension or termination is approved or favored by a majority of the producers of cattle voting in such referendum who, during a representative period determined by the Department, have been engaged in the production of cattle and who produced more than 50 percent of the volume of the cattle produced by the cattle producers voting in the referendum.

§ 1260.183 Proceedings after termination.

(a) Upon the termination of this subpart, the Beef Board shall recommend not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Beef Board. Such persons, upon designation by the Department, shall become trustees of all of the funds and property then in the possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall: (1) Continue in such capacity until discharged by the Department; (2) carry out the obligations of the Beef Board under any contracts or agreements entered into by it pursuant to § 1260.146(e); (3) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Department may direct; and (4) upon the direction of the Department, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this subpart shall be subject to the same obligations imposed upon the trustees.

(d) Any residual funds or property not required to defray the necessary expenses of liquidation shall be turned over to the Department to be utilized, to the extent practicable, in the interest of continuing one or more of the beef research or information programs hitherto authorized.

§ 1260.184 Effect of termination or amendment.

Unless otherwise expressly provided by the Department, the termination of this subpart or of any regulation issued pursuant thereto, or the issuance of any amendments to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any right or remedies of the United States, or of any person, with respect to any such violation.

§ 1260.185 Amendments.

Amendments to this subpart may be proposed, from time to time, by the Board or by an organization certified pursuant to Section 15 of the Act, or by any interested person affected by the provisions of the Act, including the Secretary.

§ 1260.186 Personal liability.

No member, alternate member, or employee of the Beef Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, of such member, alternate, or employee except for acts of dishonesty or willful misconduct.

§ 1260.187 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or circumstances is held invalid, the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances shall not be affected thereby.

Proposed by Community Nutrition Institute

Proposal No. 2

In the appropriate sections, the Beef Research and Information Order shall provide:

(a) That the Secretary shall appoint five consumer advisors to the Beef Board. Such advisors shall be persons determined by the Secretary to be knowledgeable in nutrition and food.

(b) That consumer advisors be reimbursed for necessary and reasonable expenses they incur in performing their duties as advisors to the board.

(c) That consumer advisors be compensated for actual work performed in addition to reimbursement for necessary and reasonable expenses.

Proposed by the Livestock, Poulty, Grain and Seed Division, Agricultural Marketing Service

Proposal No. 3

Make such changes as may be necessary to make the entire order conform with any provisions thereto that may result from this hearing.

Copies of this notice of hearing and the proposed order may be procured from Ralph L. Tapp, Livestock, Poultry, Grain and Seed Division, Agricultural Marketing Service, Room 2084 South Building, United States Department of Agriculture, Washington, D.C. 20250, or from the Hearing Clerk, Room 1077, South Building, United States Department of Agriculture, Washington, D.C. 20250, or may be there inspected.

From the time that a hearing notice is issued until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceedings. For this particular proceeding the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture.
Office of the Administrator, Agricultural Marketing Service.
Office of the General Counsel.
Livestock, Poultry, Grain and Seed Division, Agricultural Marketing Service (Washington office only).

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Signed at Washington, D.C. on April 17, 1979.

Jerry C. Hill,
Deputy Assistant Secretary.

[Docket No. BRIA-2]
[FR Doc. 79-12465 Filed 4-20-79; 8:45 am]
BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

[12 CFR Part 202]

Equal Credit Opportunity; Application to Credit Scoring

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rulemaking.

SUMMARY: The Board solicits comment on how the specific rules of Regulation B should apply to the following credit scoring system practices: (1) scoring number of jobs or number of sources of income; (2) not scoring the amount of an applicant's income from part-time employment, pension, or alimony; (3) selecting the reasons for adverse action judgmentally; and (4) using reasons for adverse action from the model statement when they do not correspond to the characteristics scored.

DATE: Comments must be received on or before June 20, 1979.

ADDRESS: Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. All comments should refer to docket number R-203.

FOR FURTHER INFORMATION CONTACT: Dolores S. Smith, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202-452-2412).

SUPPLEMENTARY INFORMATION: The Equal Credit Opportunity Act (ECOA) and its implementing Regulation B differentiate between "demonstrably and statistically sound, empirically derived credit systems" and "judgmental systems" of credit analysis. Credit scoring systems that meet specified tests of statistical validity qualify as demonstrably and statistically sound, empirically derived credit system. All other types of credit analysis constitute judgmental systems.

Regulations B's specific rules represent the Board's judgment about the general effect of selected credit practices on the population at large. When adopting the specific rules, the Board focused principally upon discriminatory practices of judgmental systems. Accordingly, the proper application of the specific rules to credit scoring systems remains unclear.

The Board invites comment on the four issues enumerated in the Summary. Resolving them could entail a variety of regulatory action, including amending Regulation B and issuing official interpretations. Before considering any extensive changes, the Board wishes to encourage a thorough public discussion that will address both the impact of possible changes and the need for any change at all. The options described for each issue are not mutually exclusive and do not constitute the only possible responses. The Board also solicits comment on the general subject of applying Regulation B's specific rules to credit scoring systems. After analysis of the comments received, the Board will determine what issues, if any, warrant its further consideration and what regulatory action appears appropriate.

1. *In developing and using a credit scoring system, what constitutes discounting of income and what consitutes exclusion of consideration of income?*

Section 202.6(b)(5) provides that a "creditor shall not discount or exclude from consideration the income of an applicant . . . because the income is derived from part-time employment. . . ." However, the "creditor may consider the amount and probable continuance of any income. . . ." The Board adopted this rule to prevent discrimination against married women, many of whom work only part-time, and to curtail the practice of arbitrarily

discounting the wife's income on joint applications. For a judgmental system, the rule means that the credit officer must accord reliable amounts of part-time income the same treatment given income from any other source. The Board did not consider how the rule should affect credit scoring systems.

1a. *For example, may a credit scoring system score the fact that an applicant has more than one job or multiple sources of income, and may it score secondary income differently from primary income?*

Assuming that "number of jobs" contributes to a system's predictive power, may the system assign fewer points or less weight to applicants holding multiple jobs (e.g., one—10, two or more—5 points)? Related issues include the proper treatment of the number of income sources and of the amount of income from different types of sources (earned, alimony, pension, dividend, etc.). The Board recognizes that these issues involve competing considerations and that how the question is phrased to some extent dictates the answer.

For example, those who would prohibit assigning negative points for multiple jobs argue that this practice has the effect of disadvantaging several protected classes of applicants. In addition, the literal text of the § 202.6(b)(5) rule could be interpreted to preclude discounting part-time income by type, as well as amount. Finally, to penalize an applicant for fully completing the application (e.g., providing information about part-time employment) may simply seem undesirable when selective omissions (e.g., not providing part-time employment information) would confer a greater probability of obtaining credit.

Conversely, proponents of the practice might show that "number of jobs" predicts creditworthiness. Prohibiting its use reduces system accuracy and therefore increases the aggregate risk of extending credit. Further, the regulation refers to the amount of part-time income, not its mere existence. Finally, the practice of assigning less weight to second jobs may not have the effect of discriminating on a prohibited basis since all manner of applicants "moonlights."

The Board hopes that public comments will bring additional considerations to its attention. At present, it contemplates one or more of the following options for addressing this issue.

A. Interpreting § 202.6(b)(5) as applying only to judgmental systems, thereby authorizing scoring number of jobs.

B. Interpreting the rule to prohibit scoring number of jobs, number of sources of income, or amount of income from different sources.

C. Interpreting the rule as not per se prohibiting the practice, but allowing ECOA enforcement agencies to detemine on a case by case basis whether scoring number of jobs or sources of income has the effect of impermissibly discriminating against an applicant on a prohibited basis.

1b. *How must a scoring system consider the amount of an applicant's income from part-time employment, pension, or alimony?*

Section 202.6(b)(5)'s prohibition on exluding part-time income from consideration also applies to pension and alimony income. These additional provisions seek to protect divorced women and the elderly from discrimination unrelated to their creditworthiness. When adopting them, the Board concentrated on arbitrary behavior by judgmental creditors. It now solicits comment on how this specific rule should apply to credit scoring systems.

Development of a scoring system typically uses statistical techniques to select the characteristics that, taken together, predict the repayment performance of the creditor's recent applicants. A properly designed development process may examine and reject other characteristics as nonpredictive. If secondary income does not contribute to the creditworthiness prediction, must the system score it anyway, or would having included secondary income as a trial characteristic during the intial phases of the development procedure suffice?

Proponents of scoring nonpredictive secondary income interpret § 202.6(b)(5) as requiring explicit treatment of these types of secondary income. They also point out that the section contemplates an individual analysis of the particular applicant's income and precludes assumptions based upon the experience with similar income of prior applicants. Thus, the creditor must consider the fact that a particular applicant can prove the regular receipt of alimony, even if most applicants' alimony does not arrive on schedule.

Opponents object to this interpretation as overliteral. The Board adopted the rule to deter credit officers from using stereotypes in lieu of individual analysis when dealing with divorcees, the elderly, and married women. A scoring system, however, uses only the combination of characteristics that best associate with creditworthiness. If secondary income does not statistically associate with creditworthiness, the government should not make it do so. Requiring a creditor to score a nonpredictive characteristic distorts the validity of the credit analysis process. This increases the creditor's overall risk of doing business and may result in less credit to economically disadvantaged applicants.

The Board invites comment on the issue of how a scoring system should consider the amount of an applicant's income from part-time employment, pension, or alimony, and on possible alternatives for addressing it, including:

A. Exempting credit scoring from the "consideration" rule in § 202.6(b)(5).

B. Deeming inclusion of secondary income as a trial characteristic in the system development process to constitute sufficient consideration.

C. Requiring that any scoring of amount of income include all types of income as a single characteristic.

D. Requiring that scoring systems have a judgmental override that considers secondary income.

E. Requiring positive allocation of points to secondary income regardless of its predictive power.

F. Requiring systems to inclue a subsystem that predicts the reliability of the particular applicant's secondary income.

2. *How must a creditor using a scoring system select the "specific" reasons for adverse action?*

The ECOA and Regulation B provide that, when a creditor takes "adverse action" (e.g., by rejecting a credit request), it must give the applicant either the specific reasons for the action or a disclosure of the right to receive the reasons. Section 202.9(b)(2) of the regulation requires that a statement of reasons suffices if "specific and indicates the principal reasons for the adverse." A statement that the applicant failed to achieve a passing score does not suffice as a specific reason. Receiving the reasons for adverse action gives applicants an opportunity to take remedial action, correct erroneous assumptions of the creditor, and reapply when a mutable attribute changes (e.g., when income increases).

Recent FTC consent decrees contain a requirement that users of scoring systems select their adverse action using a specified mathematical formula. Under these decrees, the creditor must examine the scoring sheet for the rejected application, subtract the applicant's score from the median score for each characteristic, and disclose the four characteristics having the largest differences. The Board's staff, on the other hand, has unofficially interpreted § 202.9(b)(2) to permit judgmental selection of reasons for adverse action, even by creditors using scoring. Thus, the credit officer may select the reasons

from all the information on the application.

Proponents of the former interpretation argue that the scored characteristics alone contribute to the credit decision, and that therefore they comprise the real reasons for adverse action. Permitting the creditor to disclose unscored characteristics from the balance of an application does not provide information the applicant can use to take remedial action. ECOA enforcement agencies also suggest that some creditors use judgmental selection of reasons to conceal discriminatory credit analysis practices. By manually selecting among all the information on the application, they intentionally mislead applicants about the true reasons for their rejection.

Opponents of the mathematical process reason that under a judgmental system the credit officer makes the credit decision and selects the reasons manually. The same officer can also select the reasons where a scoring system makes the initial decision. In addition, some important reasons occur too infrequently for inclusion on the scoring sheet (e.g., bankruptcy), but would be selected by judgmental systems as critical. Finally, a suitable method for selecting reasons for adverse action will vary from case to case, depending upon the nature of the particular credit analysis process. A fixed, mathematical procedure may prove unsuitable in certain cases. For example, a scoring system that allocates half of its possible points for a single characteristic would select this characteristic as the reason so frequently as to obscure its specificity as a reason.

The Board hopes that public comment will more fully explore these considerations. It suggests the availability of a variety of approaches to the problem.

A. Authorizing either mathematical or judgmental selection of reasons for adverse action.

B. Requiring judgmental selection.

C. Requiring that applicants with similar financial characteristics receive similar reasons, but not specifying the method for selecting them.

D. Specifying the exact formula for relating scored characteristics to selection of reasons for adverse action.

3. *Under what circumstances may a creditor employing a credit scoring system use the reasons for adverse action from Regulation B's model statement?*

As noted above, the statute and § 202.9(b)(2) require disclosure of "specific" reasons for adverse action. Section 202.9(b)(2) also provides a model "statement of credit denial, termination, or change," proper use of which satisfies this requirement. The model statement contains twenty categories of reasons for adverse action, including "other, specify." The Board adopted the model statement to facilitate compliance by small creditors.

ECOA enforcement agencies have experienced some difficulties in the specificity with which model reasons must correspond to scored characteristics while still amounting to proper use. The problem arises because scored characteristics have greater specificity than the "pertinent elements of creditworthiness" used in a typical judgmental system. For example, a creditor might score: finance company loans, yes–0, no–15; bank loans, yes–6, no—1; or credit cards from prestigious department stores, none–0, one–4, two or more–16. None of the reasons on the model notice relate closely to any of these specific characteristics. Instead of filling in the "other, specify" line, a creditor may check whichever reason seems to be closest (e.g., insufficient credit references).

Critics of this practice suggest that forcing specific characteristics into model categories of reasons violates the requirement of specificity. The practice of discounting finance company loans relates only indirectly to insufficient credit references. In addition, this mischaracterization or lack of specificity deprives rejected applicants of the opportunity to remedy their credit deficiencies. The critics argue that it therefore constitutes a misuse of the model statement and does not satisfy the specific rule's requirements. Finally, ECOA enforcement agencies suggest that some creditors use the model reasons to mislead applicants about the characteristics scored in order to conceal discriminatory practices. The agencies believe that precise restrictions on proper use of the model statement will reduce this abuse.

Conversely, the legislative history accompanying ECOA indicates that the Congress contemplated only the most general statement of reasons. One of the examples in the legislative history contains only seven reasons. Requiring that disclosed reasons for adverse action correspond exactly to scored characteristics will also disrupt the present operations of creditors that use scoring. Changing procedures and forms will entail extra compliance costs. In addition, increased specificity will mean greater uncertainty as creditors grope to comply with a new standard that lacks precise quantification. How specific is "specific"? Finally, using the model statement to evade the regulation presently constitutes a violation, and the enforcement tools for dealing with such practices already exist.

The Board perceives the question as being one of degree. Consider a system that scores the number of credit references from banks. An applicant with six references from stores, finance companies, and thrift institutions receives no points for them. Checking "insufficient credit references" on the adverse action notice seems insufficiently specific. Diclosing "no bank references" probably would suffice. What intermediate levels of specificity also comply with the requirements of a statement of specific reasons for adverse action, and how can the Board precisely articulate them? The Board envisions one or more of the following alternatives.

A. Increasing the number of reasons on the model statement.

B. Prohibiting creditors that use scoring systems from utilizing the model statement.

C. Deeming "specific" to be the general standard and leaving it to each enforcement authority to determine whether a particular reason conforms to this standard.

D. Promulgating more precise standards for relating scored characteristics to specificity of reasons for adverse action, but leaving the model statement unchanged.

E. Requiring creditors that use scoring systems to disclose that they use scoring, the exact characteristics scored, and the four characteristics for which the applicant lost the most points, in lieu of using the model statement.

Pursuant its authority under § 703 of ECOA, the Board proposes to adopt one or more of the following amendments to Regulation B. The amendments appear sequentially by issue and option. The proposed new language is in italics.

Issue 1a: Section 202.6(b)(5) would be amended to read:

Option A: *In a judgmental system,* a creditor shall not discount or exclude from consideration. . . .

Option B: A creditor shall not discount or exclude from consideration the income of an applicant or the spouse of an applicant because of a prohibited basis or because *of the amount or type of income* derived from part-time employment. . . .

Option C: A creditor shall not discount or exclude from consideration the *amount of* income of an applicant or. . . .

Issue 1b: Section 202.6(b)(5) would be amended to read:

Option A: *In a judgmental system,* a creditor shall not discount or exclude from consideration. . . .

Option B: . . . in evaluating an applicant's creditworthiness. *A demonstrably and statistically sound, empirically derived credit system may consider this income by including it as a trial characteristic during*

the system construction process. Where an applicant relies. . . .

Option C: *In a judgmental system,* a creditor shall not discount or exclude from consideration. . . . *In a demonstrably and statistically sound, empirically derived credit system that considers the amount of income of an applicant or the spouse of an applicant, the creditor shall consider all reliable income as a single characteristic.* Where an applicant relies. . . .

Option D: . . . in evaluating an applicant's creditworthiness. *A demonstrably and statistically sound, empirically derived credit system shall comply with this requirement by using a judgmental override that considers such income.* Where an applicant relies. . . .

Option E: . . . in evaluating an applicant's creditworthiness. *A demonstrably and statistically sound, empirically derived credit system shall comply with this requirement by allocating at least x per cent of the possible total points to receipt of such income,*

Issue 2: Section 202.9(b)(2) would be amended to add a new sentence at its end:

Option A: *A creditor may select the reasons either judgmentally or by using a mathematical formula.*

Option B: *A creditor using a demonstrably and statistically sound, empirically derived credit system shall select the reason(s) judgmentally.*

Option C: *A creditor using a demonstrably and statistically sound, empirically derived credit system shall select the reason(s) using a procedure that will result in applicants with similar financial characteristics receiving identical reasons.*

Option D: *A creditor using a demonstrably and statistically sound, empirically derived credit system shall select as reasons up to four characteristics on which the applicant's score differed most from the maximum possible score.*

Issue 3: Section 202.9(b)(2) would be amended as follows:

Option B: . . . for the adverse action. *A judgmental creditor may use all or a portion of the sample form printed below.* . . .

Option D: . . . for the adverse action. *A statement's reasons are specific if a reasonable consumer receives sufficient information to determine the changes in characteristics that would have resulted in approval of the application.* A creditor may formulate. . . .

Option E: . . . for the adverse action. A *judgmental* creditor may formulate its own statement of reasons. . . . *A creditor using a demonstrably and statistically sound, empirically derived credit system must disclose the use of the system, the manner of its operation, the applicant's score, the passing score, the maximum possible score, and the characteristics scored.*

* * * * *

By order of the Board of Governors, April 13, 1979.

Theodore E. Allison,
Secretary of the Board.

[Reg. B; Docket No. R-203]
[FR Doc. 79-12515 Filed 4-20-79; 8:45 am]
BILLING CODE 6210-01-M

[12 CFR Part 204]

Reserve Requirements on Federal Funds and Repurchase Agreement Time Deposits of Member Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board proposes to restructure its reserve requirements as applied to certain borrowings by member banks. Under the proposed restructuring, member banks would be required to maintain a 3 percent reserve against borrowings from domestic offices of nonmember banks and other depository institutions whose liabilities are not subject to reserve requirements and from the United States Government (and its agencies), as well as a 3 percent reserve against certain repurchase agreements on U.S. government and agency securities. Currently, such liabilities are exempt from the Board's reserve requirements.

DATE: Comments must be received by May 18, 1979.

ADDRESS: Comments should be addressed to Theodore E. Allison, Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Comments should contain Docket No. R-0218.

FOR FURTHER INFORMATION CONTACT: Allen L. Raiken, Associate General Counsel, Legal Division (202/452-3625), or Gilbert T. Schwartz, Assistant General Counsel, Legal Division (202/452-3623, Board of Governors of the Federal Reserve System.

SUPPLEMENTARY INFORMATION: The Board of Governors proposes to amend its Regulation D, Reserves of Member Banks (12 CFR 204) to restructure reserve requirements as applied to certain borrowings and repurchase agreements entered into by member banks.

Currently, borrowings by member banks from domestic offices of other banks are not defined as deposits and are not subject to reserve requirements. Also, borrowings by member banks from the United States government (principally in the form of Treasury tax and loan account note balances) and its agencies have not been regarded as deposits subject to reserve requirements. Under the Board's proposal, member bank borrowings from the domestic offices of other banks whose liabilities are not subject to reserve requirements and from the U.S. government and its agencies would be treated as a new category of time deposit subject to a 3 percent reserve requirement.

The term "bank" has been regarded as including commercial banks, savings banks, savings and loan associations, cooperative banks, the Export-Import Bank, and Minbanc Capital Corporation. (See 12 CFR 217.137). For purposes of reserve requirements (and interest rate restrictions) it is also proposed that the term "bank" be expanded to include credit unions. Member bank borrowings from domestic offices of other member banks or other organizations that are or may be required by the Board to maintain reserves and from Federal Reserve Banks would continue to be exempt from reserve requirements. The institutions that currently are subject to reserve requirments include Edge Corporations (12 U.S.C. 615), Agreement Corporations (12 U.S.C. 601-604a), and operations subsidiaries of member banks (12 CFR 204.117). In addition, pursuant to § 7 of the International Banking Act of 1978 (Pub. L. 95-369), the Board may subject U.S. branches and agencies of foreign banks to reserve requirements. The exemption is believed appropriate to facilitate the reserve adjustment process of member banks and to avoid the possibility of imposing double reserve requirements on liabilities that already may be subject to reserve requirements.

The Board's proposal would also affect member bank borrowings in the form of repurchase agreements based on U.S. government and agency securities. Currently, such repurchase agreements entered into by a member bank with any entity are not deposits and are not subject to reserve requirements. Under the Board's proposal, such obligations would be regarded as deposits and would be subject to a 3 percent reserve requirement. However, repurchase agreements entered into by a member bank with domestic banking offices of other member banks or organizations subject to reserve requirements and with the Federal Reserve System would continue to be exempt from reserve requirements.

In order to continue to facilitate the activities of member bank dealers in the U.S. government and agency securities markets, and to provide competitive equality between bank and nonbank dealers, the Board's proposal would regard repurchase agreements entered into with institutions not subject to reserve requirements as time deposits only when the amount of such repurchase agreements exceeds the amount of U.S. government and agency securities held by the member bank in

its own trading account. A member bank's trading account represents the U.S. and agency securities that it holds for its dealer transactions—i.e., securities are purchased with the intention that they will be resold rather than held as an investment. Public comment is requested on appropriate limitations on, or other descriptions of, member bank trading accounts.

It is also proposed that the 3 per cent reserve requirement apply to any obligation that arises from a borrowing by a member bank for one busines day from a dealer in securities whose liabilities are not subject to the reserve requirements of the Federal Reserve Act of proceeds of a transfer of deposit credit in a Federal Reserve Bank (or other immediately available funds), received by such dealer on the date of the loan in connection with clearance of securities transactions.

The proposed actions are designed to establish more effective control over growth of bank credit. Approximately 20 per cent of the growth in commercial bank credit during the past six months has been financed by exempt borrowings in the form of Federal funds and repurchase agreements on U.S. government and agency securities. It is anticipated that the proposed reserve requirements would moderate the growth of commercial bank credit financed through the issuance of these types of bank liabilities.

All comments and information on this proposal should be submitted in writing to Theodore E. Allison, Secretary of the Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received by May 18, 1979. All material submitted should include the Docket Number R-0218. Such material will be made available for inspection and copying upon request except as provided in section 261.6(a) of the Boards's Rules Regarding Availability of Information (12 CFR 261.6(a)).

Pursuant to its authority under Section 19 of the Federal Reserve Act (12 U.S.C. 461) to define the term deposit and to prescribe reserve ratios for member banks, the Board amends Regulation D (12 CFR 204) as follows:

1. Section 204.1 is amended by revising subparagraphs (b) and (f) as set forth below and by deleting subparagraph (4) and renumbering subparagraph (5) as subparagraph (4).

§ 204.1 Definitions.

* * * * *

(b) *Time deposits.* The term "time deposits" means "time certificates of deposit," "time deposits, open account," and "savings deposit," as defined below; except that for the purposes of § 204.5(b) "time deposits" shall have the meaning set forth therein.

* * * * *

(f) *Depositis as including certain promissory notes and other obligations.* For the purposes of this Part, the term "deposits" also includes a member bank's liability on any promissory not, acknowledgement of advance, due bill, banker's acceptance, repurchase agreements, or similar obligation (written or oral) that is issued or undertaken by a member bank as a means of obtaining funds to be used in its banking business except any such obligation that:

(1) is issued to (or undertaken with respect to) and held for the account of (i) a domestic banking office[6] or agency of another member bank or other organization whose liabilities are or may be subject to the reserve requiremnts of the Federal Reserve Act[6a] or (ii) a Federal Reserve Bank;

(2) is a repurchase agreement arising from a transfer of direct obligations, of, or obligations that are fully guaranteed as to principal and interest by the United States or any agency thereof (except any obligation that is issued to a domestic banking office or agency of another member bank or other organization whose liabilities are or may be subject to the reserve requirements of the Federal Reserve Act[6a] or to a Federal Reserve Bank) to the extent that the amount of such repurchase agreements does not exceed the total amount of United States and agency securities held by the member bank in its trading account;

* * * * *

2. Section 204.5 is amended to read as follows:

§ 204.5 Reserve requirements.

(a) *Reserve percentage.* Pursuant to the provisions of section 19 of the Federal Reserve Act and § 204.2(a) and subject to paragraphs (b) through (e) of this section, * * *

* * * * *

(b) *Reserve percentages against Federal funds and repurchase time deposits.* Deposits represented by the following shall be "time deposits," upon which a member bank shall maintain reserve balances of 3 per cent in accordance with § 204.2 and 204.3:

(1) Any deposit described in § 204.1(f) with a maturity of one day or more (including deposits subject to withdrawal after one or more day's notice) in the form of a promissory note, acknowledgement of advance, due bill, bankers' acceptance, repurchase agreement, or similar obligation (written or oral) issued to and held for the account of a domestic banking office or agency of another commercial bank or trust company, savings bank mutual or stock), a building or savings and loan association, a cooperative bank, a credit union, or the United States or an agency thereof, the Export-Import Bank of the United States, and Minbanc Capital Corporation;

(2) Any deposit described in § 204.1(f) that is a repurchase agreement arising from a transfer of direct obligations of, or obligaions that are fully guranteed as to principal and interest, by the United States or any agency thereof that the member bank is obligated to repurchase;

(3) Any obligation that arises from a borrowing by a member bank from a dealer in securities that is not a member bank or other organization whose liabilities are or may be subject to the reserve requirements of the Federal Reserve Act, for one business day, of proceeds of a transfer of deposit credit in a Federal Reserve Bank (or other immediately available funds), received by such dealer on the date of the loan in connection with clearance of securities transactions.

* * * * *

(f) *Currency and coin.* The amount of a member bank's currency and coin shall be counted as reserves in determining compliance with the reserve requirements of this section.

By order of the Board of Governors of the Federal Reserve System, April 13, 1979.

Theodore E. Allison,
Secretary of the Board.

[Regulation D; Docket No. R-0128]
[FR Doc. 79-12517 Filed 4-20-79; 8:45 am]
BILLING CODE 6210-01-M

[6] * * *

[6a] Liabilities of Edge Corporations, Agreement Corporations, and operations subsidiaries of member banks are subject to reserve requirements of the Federal Reserve Act. As specified by the International Banking Act of 1978, liabilities of U.S branches or agencies of foreign banks may be subject to reserve requirements of the Federal Reserve Act.

FEDERAL DEPOSIT INSURANCE CORPORATION

[12 CFR Parts 330, 346]

Foreign Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The FDIC proposes to promulgate a new regulation (Part 346)

and amend an existing regulation (Part 330) to implement the International Banking Act of 1978 (the "Act", 12 U.S.C. 3101 *et seq.*). The Act requires, in part, that certain branches of foreign banks be insured by the FDIC. The proposed regulations establish rules for determining whether a State branch must be insured and set out the FDIC's requirements for insured branches.

DATES: Comments must be received by the FDIC by May 25, 1979.

ADDRESS: Comments should be addressed to Mr. Hoyle L. Robinson, Acting Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429.

FOR FURTHER INFORMATION, CONTRACT: Margaret M. Olsen, Attorney, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429 (202–389–4433).

SUPPLEMENTARY INFORMATION: On December 27, 1978, the FDIC published for comment preliminary staff conclusions as to several issues regarding implementation of the Act (the "Advance Notice", 43 F.R. 60279). The FDIC received some 28 written comments on the Advance Notice. The majority of the comments were from the foreign banking community.

Under § 6 of the Act, certain branches of foreign banks are required to obtain Federal deposit insurance. In particular, deposit insurance is required for a Federal branch that accepts deposits of less than $100,000 and for a State branch that accepts deposits of less than $100,000 if it is located in a State which requires deposit insurance for State-chartered banks. Exemptions from the insurance reqirement may be granted either by regulation or by order of the Comptroller of the Currency, in the case of a Federal branch, or the FDIC, in the case of a State branch, if the branch is not engaged in a domestic retail deposit activity requiring insurance protection.

Section 6 also makes numerous amendments to the Federal Deposit Insurance Act (the "FDI Act"). Some of these amendments apply only to foreign banks having insured branches; other amendments apply existing requirements for domestic banks to foreign banks having insured branches. The amendments to the FDI Act dealt with in the proposed regulation are: (1) A requirement that the foreign bank give a commitment for examination; (2) A requirement that the foreign bank pledge assets to the FDIC or provide a surety bond; (3) rules for the insurance of deposits in the branch; and, (4) rules for the assessment of deposits by the FDIC.

Brief Analysis of Part 346

Subpart B of proposed Part 346 establishes rules for determining which State branches must obtain deposit insurance. Basically, branches engaged in a "retail" deposit activity must be insured while branches engaged in a "wholesale" deposit activity do not have to be insured. These rules apply to State branches; the Comptroller of the Currency will establish rules for determing which Federal branches are required to be insured. Federal branches deemed by the Comptroller to require insurance must, however, apply to the FDIC for insurance. Subpart B also includes a requirement that where one branch of a foreign bank becomes insured, every branch of that bank must become insured (except for branches operating under an agreement with the Federal Reserve to accept only those deposits permitted an Edge corporation). This condition for insurance applies to both Federal and State branches.

Subpart C establishes rules that apply to foreign banks which operate insured State or Federal branches. These rules requires a foreign bank having an insured branch to: (1) Provide FDIC with information regarding the bank's activities outside of the United States and allow FDIC to examine the bank's activities in the United States; (2) maintain records in an appropriate manner; (3) pledge assets under terms acceptable to the FDIC; and (4) maintain assets at the branch equal in value to the branch's liabilities. Rules for assessing the deposits of an insured branch are also set out.

Discussion of Issues

1. *Operation of insured and uninsured branches.* FDIC's Board of Directors proposes to grant insurance to one branch of a foreign bank only on the condition that every branch of the bank in the United States be insured. This condition would not apply to a branch located outside of the foreign bank's home State and operating under an agreement with the Federal Reserve to accept only those deposits permitted an Edge corporation. The Board is concerned that public confusion might result were a foreign bank to have insured branches and uninsured branches, particularly in the same State. Under such circumstances, a depositor might not realize that a deposit in one branch is insured but that a deposit in another branch of the same bank would not be insured. This condition is believed necessary to protect the unsophisticated depositor. This issue was not addressed in the Advance Notice and the Board specifically requests comments on this issue.

2. *Mandatory Insurance.* Under § 6 of the Act, a State branch must be insured if the branch accepts deposits of less than $100,000 and if the branch is located in a State that requires State banks to be insured. The Board proposes that the initial deposit be determinative of this dollar limitation. The initial desposit is defined as the first deposit transaction between the branch and the depositor. Accounts which are held by the depositor in the same right and capacity may be added together for the purpose of determining the amount of the initial deposit. Branches established before September 17, 1978 would not be subject to the initial deposit rule until September 16, 1979 and such a branch could retain deposits accepted before the September 1979 date without having to become an insured branch. Most comments on the Advance Notice agreed that the initial deposit is appropriate for determining the statutory dollar limitation.

In considering whether a State requires deposit insurance for State banks, FDIC's Board of Directors proposes to look to requirements imposed by statute, regulation or policy. The Board considers a requirement by policy to be as binding on State banks as a statute or regulation, otherwise foreign banks would have a competitive advantage over State banks. The comments on this issue were divided as to whether policy should be included as a State requirement.

3. *Exemptions from the insurance requirement.* The Board proposes two procedures for exempting from the insurance requirement branches which accept initial deposits of less than $100,000. First, the branch can limit its deposit activities to those described in proposed § 346.7(a). Under this section, an uninsured branch may accept deposits from any commercial concern (except a small domestic business), any governmental unit, any international organization or any deposit which may be accepted by an Edge corporation. An uninsured branch may also issue drafts or checks of less than $100,000 (except money orders or traveler's checks issued to natural persons). In addition, an uninsured branch may accept deposits of less than $100,000 from any person so long as such deposits do not exceed 2% of the branch's total deposits. This permits the branch to accept deposits from corporate officers, embassy or consular personnel and branch employees without having to be insured.

Based on comments received, the list of exempt deposit activities was

expanded from those listed in the Advance Notice. Most commenters requested that an uninsured branch be permitted to accept accounts from corporate officers, embassy or consular personnel, and branch employees, arguing that such deposits are incident to a wholesale activity.

In addition, in response to several comments, a procedure has been established to allow a foreign bank to request an exemption from the insurance requirement for a specific branch. This procedure will allow the bank to operate an uninsured branch when the Board determines that the deposit activities at that branch do not require insurance protection. Branches which are exempt under either procedure must notify their depositors that their deposits are not insured by the FDIC.

Also, as provided in § 5 of the Act, a branch located outside of the foreign bank's home state is not required to be insured whenever the bank has entered into an agreement with the Federal Reserve to accept at that branch only those deposits that are permissible for an Edge corporation.

4. *Agreement to provide information and for examination.* Under § 10(b) of the FDI Act a foreign bank, as a condition of insurance of a branch, must give the FDIC a written commitment that the FDIC may examine the bank and its affiliates to the extent the FDIC deems necessary. The FDIC is aware that most foreign banks would be prohibited, or at least restricted, by law or policy of the country of the bank's domicile from providing such a commitment. Were the FDIC to require a commitment allowing the FDIC to conduct a full examination of the bank, it is probable no foreign bank could operate an insured branch. This result clearly was not intended by Congress. Thus, the FDIC proposes that a foreign bank agree to provide the FDIC with information regarding the affairs of the bank and its affiliates which are located outside of the United States. As to activities within the United States, the bank shall agree to allow the FDIC to examine the affairs of the bank and its affiliates. This issue was not addressed in the Advance Notice and specific comment is requested on it.

5. *Pledge of asset requirements.* Under § 5(c) fo the FDI Act the FDIC may require a foreign bank to pledge assets or deliver a surety bond to the FDIC in order to protect the deposit insurance fund against risk of loss from insuring deposits in a branch. Under the proposed regulation, the FDIC will require a pledge of assets equal in value to 10% of the insured branch's total liabilities (with minor adjustments). If the State or Federal licensing authority of the branch requires the branch to pledge assets, the branch may deduct from the amount required to be pledged to the FDIC the amount pledged to the licensing authority so long as the FDIC retains a pledge of assets equal in value at least to 5% of the branch's liabilities. Whenever the FDIC is obligated to pay the insured deposits of an insured branch, the pledged assets will become FDIC's property to be used to the extent necessary to protect the insurance fund.

It is proposed that the pledged assets be held at a depository acceptable to the FDIC and under an agreement consistent with the terms set out in the regulation. The proposed regulation also sets out the kinds of assets acceptable to the FDIC.

Comments on the Advance Notice on this issue were generally concerned about the FDIC taking a pledge of assets separate from that of the States or the Comptroller of the Currency. The Board, however, is concerned that a joint pledge would not provide additional protection to the deposit insurance fund. This additional protection may be necessary since most of the bank's activities, assets, and personnel are largely outside of the United States.

6. *Asset Maintenance.* The Board is proposing to establish an asset maintenance rule for insured branches. The Board is concerned that without such a rule, in the event of liquidation of the branch, sufficient assets would not be available to protect creditors of the branch. As proposed, an insured branch would be required to maintain, on an average daily basis, assets equal in book value to the amount of the branch's liabilities. For the purpose of this rule, the branch must exclude as an asset (1) amounts due from related entities; (2) assets classified by the examining authorities as "loss" and half the value of those classified as "doubtful"; and, (3) correspondent accounts when there is no valid waiver of offset agreement. In addition, if the branch does not have actual possession of an asset, the branch may include it only if the branch holds title and if proper records are maintained. In determining its liabilities, the branch must exclude amounts due to related entities.

Most comments on this issue in the Advance Notice argued that the FDIC should not impose an asset maintenance rule.

7. *Assessment Base.* The Board proposes to assess all deposits in an insured branch except for deposits of related entities. Assessments would be in accordance with Part 327 of FDIC's rules.

8. *Insured Deposit.* Although the Act permits the FDIC's Board of Directors to limit insurance to certain categories of depositors, the Board is concerned that, if insurance coverage were so limited, it would be virtually impossible to administer in the event of the liquidation of the branch. Instead, it is proposed that deposits (except for those of related entities) be insured to the statutory limit ($40,000 per depositor).

Most comments on the Advance Notice were against the expansion of insurance coverage. Several commenters were in favor of all deposits being insured. Those that opposed the expansion believed that Congress intended to limit the coverage.

Accordingly, the Board proposes to add new Part 346 (12 CFR Part 346) and amend Part 330 of FDIC's rules and regulations as set out below.

By Order of the Board of Directors, April 16th, 1979.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson

Acting Executive Secretary.

PART 330—CLARIFICATION AND DEFINITION OF DEPOSIT INSURANCE COVERAGE

Part 330 is amended by adding a new § 330.0; by revising the third sentence of § 330.1(a); and, by adding a new paragraph (d) to § 330.1 to read as follows:

§ 330.0 Definition.

For the purpose of this Part 330 the term "insured bank" includes an insured branch of a foreign bank.

§ 330.1 General principles applicable to determining insurance of deposit accounts.

(a) *General.* * * * Insofar as rules of local law enter into such determinations, the law of the jurisdiction in which the insured bank's principal office is located shall govern, except where the insured bank is an insured branch of a foreign bank, in which case the law of the jurisdiction where the insured branch is located shall govern.

* * * * *

(d) *Insured branches of foreign banks.* (1) Except as provided in § 330.1(d)(3) deposits in an insured branch of a foreign bank which are payable in the United States shall be insured in accordance with the rules of this part.

(2) Deposits held by an insured depositor in any insured branch or insured branches of the same foreign bank shall be added together for deposit insurance purposes.

(3) Deposits of the foreign bank or any office, branch or agency of and wholly owned (except for a nominal number of directors' shares) subsidiary shall not be insured.

PART 346—FOREIGN BANKS

Subpart A—Definitions

Sec.
346.1 Definitions.

Subpart B—Insurance of Depostis

346.2 Scope.
346.3 Restrictions on operation of insured and uninsured branches.
346.4 General principles applicable to determining which State branches must be insured.
346.5 Insurance requirement.
346.6 Interstate branches.
346.7 Exemptions from the insurance requirement.
346.8 Notification to depositors.
346.9 Optional insurance
346.10–346.15 [Reserved]

Subpart C—Foreign Banks Having Insured Branches

346.16 Scope.
346.17 Agreement as to information provided by an examination of the bank.
346.18 Records.
346.19 Pledge of assets.
346.20 Asset maintenance.
346.21 Deductions from the assessment base.

Authority: Secs. 5, 6, 13, Pub. L. 95–369, 92 Stat. 613, 614, 624 (12 U.S.C. 3103, 3104, 3108); secs. 5, 7, 9, 10, Pub. L. 797, 64 Stat. 876, 877, 881, 882 (12 U.S.C. 1815, 1817, 1819, 1820).

Subpart A—Definitions

§ 346.1 Definitions.

For the purposes of this part:

(a) "Foreign bank" means any company organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa or the Virgin Islands, which engages in the business of banking, or any subsidiary or affiliate, organized under such laws, of any such company. the term includes foreign commercial banks, foreign merchant banks and other foreign institutions that engage in banking activities usual in connection with the business of banking in the countries where such foreign institutions are organized and operating.

(b) "Foreign country" means any country other than the United States and includes any colony, dependency or possession of any such country.

(c) "State" means any State of the United States or the District of Columbia.

(d) "Branch" means any office or place or busines of a foreign bank located in any State of the United States at which deposits are received.

(e) "Federal branch" means a branch of a foreign bank established and operating under the provisions of § 4 of the International Banking Act of 1978 (12 U.S.C. 3102).

(f) "State branch" means a branch of a foreign bank established and operating under the laws of any State.

(g) "Insured branch" means a branch of a foreign bank any deposits of which branch are insured in accordance with the provisions on the Federal Deposit Insurance Act.

(h) "Uninsured branch" means a branch of a foreign bank deposits of which branch are not insured in accordance with the provisions of the Federal Deposit Insurance Act.

(i) "Insured bank" means any bank, including a foreign bank having an insured branch, deposits of which are insured in accordance with the provisions of the Federal Deposit Insurance Act.

(j) "Home State" of a foreign bank means the State so determined by the election of the foreign bank, or in default of such election, by the Board of Governors of the Federal Reserve System.

(k) "Initial deposit" means the first deposit transaction between a depositor and the branch. The initial deposit may be placed into different kinds of deposit accounts, such as demand, savings or time. Deposit accounts that are held by a depositor in the same right and capacity may be added together for the purposes of determining the dollar amount of the initial depost.

(l) "Domestic retail deposit activity" means the acceptance by a State branch of any initial depost of less than $100,000.

(m) A "majority owned subsidiary" means a company the voting stock of which is 50 percent or more owned or controlled by another company.

(n) "Affiliate" means the same as in Section 2 of the Banking Act of 1933 (12 U.S.C. 221a).

(o) "Depository" means any insured State bank or national bank.

Subpart B—Insurance of Deposits

§ 346.2 Scope.

(a) This subpart B implements the insurance provisions of § 6 of the International Banking Act of 1978 (12 U.S.C. 3104). It sets out the FDIC's rules regarding deposit activities requiring a State branch to be an insured branch; deposit activities not requiring a State branch to be an insured branch; procedures for a State branch to apply for an exemption from the insurance requirement; and, depositor notification requirements.[1] It sets out the FDIC's policy regarding the operation of insured and uninsured branches, whether State or Federal, by a foreign bank and it provides that any branch has the option of applying for insurance.

(b) Any application for insurance under this subpart should be filed in accordance with Part 303 of the FDIC's Rules and Regulations.

§ 346.3 Restriction on operation of insured and uninsured branches.

The Board of Directors will not insure deposits in any branch of a foreign bank unless the foreign bank agrees that every branch established or operated by the foreign bank in the United States will be an insured branch: *Provided,* That this restriction does not apply to a branch subject to an agreement with the Board of Governors of the Federal Reserve System under § 5 of the International Banking Act (12 U.S.C. 3103).

§ 346.4 General principles applicable to determining which State branches must be insured.

(a) Each State branch of a foreign bank shall be considered separate for the purposes of this Subpart B.

(b) Any remote service facility operated by a foreign bank will not be deemed a separate State branch for the purposes of this Subpart B. Any remote service facility established for the benefit of a State branch that is required to be an insured branch will be deemed part of that State branch.

§ 346.5 Insurance requirement.

(a) *General rule.* Except as provided in § 346.6 or § 346.7, a foreign bank shall not establish or operate any State branch which is not an insured branch whenever—

(1) The branch is engaged in a domestic retail deposit activity; and,

(2) The branch is located in a State which requires a bank organized and existing under State law to have deposit insurance whenever the bank accepts deposits from the general public. A State requirement is one imposed by statute or by State banking department regulation or policy.

(b) *Branches established before September 17, 1978.* A foreign bank which established a State branch before September 17, 1978 may operate that branch as an uninsured branch until

[1] These rules do not apply to a Federal branch; the Comptroller of the Currency's regulations establish such rules for Federal branches. Federal branches deemed by the Comptroller to require insurance must apply to the FDIC for insurance.

September 16, 1979 without restriction on its deposit activities. After September 16, 1979 the provisions of paragraph (a) of this section shall be applicable to that branch.

§ 346.6 Interstate branches.

A foreign bank may operate any State branch as an uninsured branch whenever—

(a) The branch is located outside of the home State of the foreign bank; and,

(b) The foreign bank has entered into an agreement with the Board of Governors of the Federal Reserve System to accept at that branch only those deposits as would be permissible for a corporation organized under Section 25(a) of the Federal Reserve Act (12 U.S.C. 611 *et seq.*) and implementing rules and regulations administered by the Board of Governors (12 CFR Part 211).

§ 346.7 Exemptions from the insurance requirement.

(a) *Deposit activities not requiring insurance.* A State branch will not be deemed to be engaged in a domestic retail deposit activity which requires the branch to be an insured branch under § 346.5 if the acceptance of initial deposits in an amount of less than $100,000 is limited to the following:

(1) Any sole proprietorship or any business entity, including any corporation, partnership, association or financial institution, which engages in commercial activity for profit: *Provided,* That this category does not include a business which is organized under the laws of any State or the United States, majority owned by United States citizens or residents and that has total assets not exceeding $1,500,000 at the most recent fiscal year statement as of the date of initial deposit. The $1,500,000 asset test is applicable to the depositor's combined financial interests including the business activities of an individual or parent company and its majority owned subsidiary(s) and affiliate(s).

(2) Any governmental unit, including the United States government, any State government, any foreign government and any political subdivision or agency of the foregoing.

(3) Any non-profit organization which is organized under the laws of a foreign country.

(4) Any international organization membership in which is comprised of two or more nations.

(5) Any other depositor but only if (i) the aggregate amount of deposits under this subparagraph (5) does not exceed 2 percent of the branch's total deposits, excluding deposits of other offices, branches, agencies or wholly owned subsidiaries of the bank, and (ii) the branch does not solicit deposits from the general public.

(6) Any deposit that the Board of Governors of the Federal Reserve System permits a corporation organized under Section 25(a) of the Federal Reserve Act (12 U.S.C. 611 *et seq.*) to accept under the rules and regulations promulgated by the Board of Governors (12 CFR Part 211).

(7) Any draft or check issued by the branch; *Provided,* That this category does not include any money order or traveler's check issued to a natural person.

(b) *Application for an exemption.* (1) Whenever a foreign bank proposes to accept at a State branch initial deposits of less than $100,000 and such deposits are not otherwise excepted under paragraph (a) of this section, the foreign bank may apply to the FDIC for consent to operate the branch as an uninsured branch. The Board of Directors may exempt the branch from the insurance requirement if the branch is not engaged in domestic retail deposit activities requiring insurance protection. The Board of Directors will consider the size and nature of depositors and deposit accounts in making this determination.

(2) Any request for an exemption under paragraph (b) of this section should be in writing and authorized by the board of directors of the foreign bank. The request should be filed with the Regional Director of the FDIC Regional Office where the branch is located.

(3) The request should detail the kinds of deposit activities the branch proposes to engage in, the expected source of deposits and the manner in which deposits will be solicited.

§ 346.8 Notification to depositors.

Any State branch that is exempt from the insurance requirement pursuant to § 346.7 shall—

(a) Display conspicuously at each window or place where deposits are usually accepted a sign stating that deposits are not insured by the FDIC; and

(b) Include in bold face, conspicuous type on each signature card, passbook and instrument evidencing a deposit the statement "This deposit is *NOT* insured by the FDIC."

§ 346.9 Optional insurance.

A foreign bank may apply to the FDIC for deposit insurance for any State branch that is not otherwise required to be insured under § 346.5 or for any Federal branch that is not otherwise required to be insured under the rules and regulations of the Comptroller of the Currency.

§§ 346.10–346.15 [Reserved].

Subpart C—Foreign Banks Having Insured Branches

§ 346.16 Scope.

This Subpart C sets out the rules that apply only to a foreign bank that operates or proposes to establish an insured State or Federal branch. These rules relate to: an agreement to provide information and for an examination; record-keeping; pledge of assets; asset maintenance; and deductions from the assessment base.

§ 346.17 Agreement as to information provided by and examination of the bank.

(a) A foreign bank that applies for insurance for any branch shall agree in writing to the following terms: (1) The foreign bank will provide the FDIC with information regarding the affairs of the bank and its affiliates which are located outside of the United States as the FDIC from time to time may request to (i) determine the relations between the insured branch and the bank and its affiliates and (ii) assess the financial condition of the bank as it relates to the insured branch. If the laws of the country of the bank's domicile or the policy of the Central Bank or other banking authority prohibit or restrict the foreign bank from entering into this agreement, the foreign bank shall agree to provide information to the extent permitted by such law or policy. Information provided shall be in the form requested by the FDIC and shall be made available in the United States. The Board of Directors will consider the existence and extent of this prohibition or restriction in determining whether to grant insurance and may deny the application if the information available is so limited in extent that an unacceptable risk to the insurance fund is presented.

(2) The FDIC may examine the affairs of any office, agency, branch or affiliate of the foreign bank located in the United States as the FDIC deems necessary to (i) determine the relations between the insured branch and such offices, agencies, branches or affiliates and (ii) assess the financial condition of the bank as it relates to the insured branch. The foreign bank shall also agree to provide the FDIC with information regarding the affairs of such offices, agencies, branches or affiliates as the FDIC deems necessary. The Board of Directors will not grant insurance to any branch if the foreign bank fails to enter

into an agreement as required under this subparagraph (2).

(b) The agreement shall be signed by an officer of the bank who has been so authorized by the foreign bank's board of directors. The agreement and the authorization shall be included with the foreign bank's application for insurance. Any agreement not in English shall be accompanied by an English translation.

(c) The provisions of this section do not apply to a bank organized under the laws of Puerto Rico, Guam, American Samoa or the Virgin Islands which is an insured bank other than by reason of having an insured branch.

§ 346.18 Records.

(a) *In English.* The records of each insured branch shall be kept in the words and figures of the English language.

(b) *Separate records.* The records of each insured branch shall be kept as though it were a separate entity, with its assets and liabilities separate from the other operations of the head office, other branches or agencies of the foreign bank and its subsidiaries or affiliates.

(c) *Exemption.* The provisions of this section do not apply to a bank organized under the laws of Puerto Rico, Guam, American Samoa or the Virgin Islands which is an insured bank other than by reason of having an insured branch.

§ 346.19 Pledge of assets.

(a) *Purpose.* A foreign bank that has an insured branch shall be required to pledge assets for the benefit of the FDIC or its designee(s). Whenever the FDIC is obligated to pay the insured deposits of an insured branch, the assets pledged under this section shall become the property of the FDIC to be used to the extent necessary to protect the deposit insurance fund.

(b) *Amount of assets to be pledged.* (1) A foreign bank shall pledge assets equal to ten percent of the insured branch's total liabilities as set out in the insured branch's most recent quarterly report of condition. In determing the total liabilities, the branch may exclude amounts due and other liabilities to other offices, agencies or branches and wholly owned (except for a nominal number of directors' shares) subsidiaries of the foreign bank only if claims of other offices, agencies, branches and wholly owned (except for a nominal number of directors' shares) subsidiaries of the foreign bank are subordinated by law or agreement to the claims of other creditors of the branch. Whenever a state licensing authority or the Comptroller of the Currency require the bank to pledge assets, the foreign bank may deduct from the amount of assets required to be pledged to the FDIC the amount of assets pledged to the State or the Comptroller of the Currency but such deduction may not be greater than assets equal to five percent of the branch's total liabilities. Adjustments to the amount pledged shall be made within two business days after the date required for filing the report of condition.

(2) The initial ten percent deposit for a newly established insured branch shall be based on the branch's projection of liabilities at the end of the first year of its operation.

(3) The FDIC may require a foreign bank to pledge additional assets whenever the FDIC determines the foreign bank's or any branch's condition is such that the assets pledged under § 346.19(b) (1, 2) or any surety bond provided under § 346.19(g) will not adequately protect the deposit insurance fund.

(c) *Depository.* A foreign bank in carrying out the requirements of this section shall deposit pledged assets for safekeeping at any depository which is located in the same the State as the insured branch and which is acceptable to the FDIC.

(d) *Assets that may be pledged.* Subject to the right of the FDIC to require substitution, a foreign bank may pledge any of the following kinds of assets.

(1) Certificates of deposit that are payable in the United States and that are issued by federally or State chartered institutions which have executed a valid waiver of offset agreement: *Provided,* That the maturity of any given certificate is not greater than one year;

(2) Interest bearing bonds, notes, debentures or other obligations of the United States or any agency or instrumentality thereof;

(3) Interest bearing bonds, notes or debentures guaranteed by the United States government or any agency or instrumentality thereof;

(4) Commerical paper that is rated "A" or better by a nationally recognized rating service: *Provided,* That any conflict in a rating shall be resolved in favor of the lower rating;

(5) Banker's acceptances that are payable by federally or State chartered banks that have executed a valid waiver of offset agreement: *Provided,* That the maturity of any given acceptance is not greater than 180 days and;

(6) State, county or municipal obligations that are rated "A" or better by a nationally recognized rating service: *Provided,* That any conflict in a rating shall be resolved in favor of the lower rating;

(7) Obligations of the Asian Development Bank, Inter-American Development Bank and the International Bank for Reconstruction and Development; or

(8) Any asset determined by the FDIC to be acceptable.

(e) *Deposit agreement.* A foreign bank shall not deposit any pledged asset required under § 346.19(c) until a deposit agreement acceptable to the FDIC has been executed. The agreement, in addition to other terms not inconsistent with this paragraph (e), shall give effect to the following terms:

(1) *Assets to be held for safekeeping.* The depository shall hold any asset deposited by the foreign bank pursuant to the deposit agreement for safekeeping as a special deposit free of any lien, charge, right of set-off, credit or preference in connection with any claim of the depository against the foreign bank.

(2) *Depository to furnish receipt.* Whenever the foreign bank deposits any assets, the depository shall provide the foreign bank with a receipt and shall provide the FDIC with a copy thereof. The receipt shall identify the deposit as having been made pursuant to the agreement under this section. The receipt shall specify, with respect to each asset or issue, the complete title, interest rate, series, serial number (if any), maturity date and call date. The foreign bank shall certify to the FDIC and the depository the lower of cost or market value for each asset and the aggregate of those values for all assets.

(3) *Examination of assets.* The depository shall hold any asset deposited by the foreign bank separate from all other assets and shall permit representatives of the foreign bank or the FDIC to examine the deposited assets.

(4) *List of pledged assets.* The depository shall furnish at the FDIC's request a written list of currently pledged assets. The list shall set forth information as requested by the FDIC.

(5) *Release of assets upon substitution of other assets.* (i) A depository shall release assets without the consent of the FDIC only in accordance with the provisions of this paragraph. The foreign bank shall, at the time of any release by the depository, deposit with the depository other assets of an aggregate value not less than the aggregate value of the assets released. The aggregate value of any assets deposited or released shall be based on the lower of cost or market value. The foreign bank shall certify to the depository that, after

giving effect to the exchange, the aggregate value of all assets remaining on deposit is at least equal to the amount required to be pledged under § 346.19(b). The certificate shall specify as to each asset released and each asset pledged: (A) The complete title; (B) the interest rate, series, serial number (if any), face value, maturity date, call date, the lower of cost or market value of each asset; and (C) the aggregate amount, based on cost or market value, whichever is lower, of assets. Upon receipt of the certificate and a statement by the foreign bank that a copy of the certificate is concurrently being furnished to the FDIC, the depository shall release assets.

(ii) The FDIC may suspend or terminate the right to exchange assets by written notice to the bank and the depository.

(6) *Release upon order of the FDIC.* The depository may release to the foreign bank any pledged asset upon the written order of the FDIC. The depository shall release only the assets specified in the order. The release of such assets may be made without pledging other assets, unless otherwise provided in the order.

(7) *Release to the FDIC.* Whenever the FDIC is obligated to pay insured deposits of an insured branch, the depository shall release to the FDIC any pledged asset upon the written certification of the FDIC that the FDIC has become so obligated. Upon receipt of certification and release of pledged assets, the depository shall be discharged from further obligation under the deposit agreement.

(8) *Interest earned on assets.* The foreign bank may receive any interest earned upon the pledged assets unless the depository receives an order by the FDIC prohibiting the receipt of interest.

(9) *Expenses of agreement.* The FDIC shall not be required to pay for any services under the agreement.

(10) *Termination of agreement.* The deposit agreement may be terminated by the foreign bank or the depository upon at least 60 days written notice to the other party. No termination shall be effective until (i) another depository has been designated by the foreign bank and approved by the FDIC; (ii) a deposit agreement acceptable to the FDIC has been agreed upon by the bank and the new depository; and (iii) the depository has released to the newly designated depository assets on deposit in accordance with the bank's written instructions, as approved by the FDIC.

(11) *Waiver of terms.* The FDIC may by written order relieve the foreign bank or the depository from compliance with any term or condition of the agreement.

(f) Each insured branch shall separately comply with the requirements of this section.

(g) In lieu of or in addition to a pledge of assets, a foreign bank may, with the approval of the FDIC, secure a surety bond for the benefit of the FDIC. The FDIC may set such terms and conditions for the surety bond as it deems necessary.

(h) *Exception.* Unless otherwise required by the FDIC, a bank organized under the laws of Pureto Rico, Guam, American Samoa or the Virgin Islands which is an insured bank other than by reason of having an insured branch, shall not be required to pledge assets under this section.

§ 346.20 Asset maintenance.

(a) An insured branch shall maintain on an average daily basis for the weekly computation period eligible assets that are payable in United States dollars (or in currency freely convertible to United States dollars) in an amount at least equal in book value to the amount of the branch's liabilities. In determining the eligible assets for the purposes of this section, the branch shall exclude (1) all amounts due from the parent bank and any other branch, agency, office or wholly owned subsidiary of the bank; (2) 50 percent or more of any asset classified "Doubtful" and 100 percent of any asset classified "Loss" in the most recent examination report prepared by the FDIC or the Comptroller of the Currency; and (3) any deposit of the branch in a bank unless the bank has executed a valid waiver of offset agreement. An asset not in the branch's actual possession shall be an eligible asset only if the branch holds title to such asset and the branch maintains records sufficient to enable independent verification of the branch's ownership of the asset. In determining the amount of liabilities, the branch shall exclude any amount due to the parent bank and any other branch, agency, office or wholly owned subsidiary of the bank.

(b) The average daily book value of the branch's assets and liabilities shall be computed at the close of the business every Wednesday for the preceding week. The branch may rely on this average value for the purpose of determining compliance with paragraph (a) of this section. Calculations as to the average daily value of the branch's assets and liabilities shall be retained by the branch until the next examination.

§ 346.21 Deductions from the assessment base.

An insured branch may deduct from it assessment base deposits in the insured branch of any office, branch or agency of and any wholly owned (except for a nominal number of director's shares) subsidiary.

[FR Doc. 79-12527 Filed 4-20-79; 8:45 am]
BILLING CODE 6714-01-M

SMALL BUSINESS ADMINISTRATION

[13 CFR Part 121]

Method of Determining Small Business Status for Small Business Administration Loan Assistance

AGENCY: Small Business Administration.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This proposed rulemaking would consider changes in the present formula method for determining a small business for the purposes of an SBA loan when the applicant has external operating affiliates. The present formula method has often been criticized as being unduly restrictive and unclear as to when its use is appropriate. The SBA hopes to clarify the method used to determine the status of applicants for SBA financial assistance.

DATE: Written comments must be submitted by May 23, 1979.

ADDRESS: Send all comments to: Kaleel C. Skeirik, Director, Size Standards Division, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, (202) 653-6373

SUPPLEMENTARY INFORMATION: The general rule for determining the applicable size standard for loans where a concern operates in more than one industry, or has internal operating affiliates which operate in more than one industry, is to determine the primary industry and apply the size standard for that industry.

Currently, there is a special rule that applies when there are external-operating affiliates engaged in industries subject to different size standards. This rule begins as a part of the first paragraph of § 121.3-10 of the Small Business Size Standards and reads as follows:

If an applicant for an SBA loan has external-operating affiliates (i.e., affiliates which are primarily engaged in selling to the general public or to concerns other than the applicant concern or an affiliate thereof) and such external-operating affiliates are engaged

in industries subject to size standards different than that of the applicant concern, the applicant concern's size status shall be determined by computing the percentage that the size of the applicant concern including any internal-operating affiliates (i.e., affiliates primarily engaged in selling to the applicant or an affiliate thereof) is of the size standard for the industry in which the applicant together with its internal-operating affiliates is primarily engaged; and adding to it the percentage that the size of each of its external-operating affiliates is of the size standard for the industry in which each such external-operating affiliate is primarily engaged. In order for the applicant to be eligible under this revision, the total of such percentages must not exceed 100 percent. If a concern, including its internal-operating affiliates, if any, is engaged in more than one industry, the applicable size standard shall be that for its primary industry. In determining which of the industries is the primary industry, consideration shall be given to these criteria among others: Distribution among such industries of receipts, employment, and costs of doing business.

In practice, this rule has proved difficult to administer, as the following determinations which are often complex must be made.

1. That there are at least two legally distinct concerns;

2. That at least two legally distinct concerns sell primarily to the general public;

3. That these external concerns are subject to different size standards;

4. What the percentages of the applicant and its internal and external affiliates' businesses are to the appropriate size standards; and

5. Adding the percentages to determine whether they exceed 100.

There often are difficulties in determining the primary industry of a concern without adding a further requirement of having to determine between external- and internal-operating affiliates.

Furthermore, it is inconsistent with the size regulations, in general, which determine size based on all the affiliated entities regardless of their industry and organizational structure; and that, in the absence of easy transfer of capital between affiliates, undercapitalization and/or failure of legitimate small business may result.

Alternatives to the pecentage formula that are currently being considered by the SBA include:

1. If a concern, including its affiliates, if any, is engaged in more than one industry with different size standards, the applicable size standard shall be that of its primary engaged industry. The test of whether the concern meets the size standard shall be calculated by applying the same standard (whether employees or receipts) to both the concern and its affiliates. Thus, if the size standard of the primary engaged industry is 250 employees, the sum of employees in both the primary concern and its affiliates must not exceed 250 persons, and other factors such as primary industry of affiliates or revenues would be considered irrelevant.

In determining which of the industries is the primary industry, consideration is given to these criteria among others: Distribution among such industries of receipts, employment, and costs of doing business. This method is relieved of the external/internal determination.

2. A firm is small if it (including its affiliates) does not exceed the size standard relevant to the primary activity of the industry of the firm applying for the loan.

3. Continue to use the percentage formula, but raise the standard—e.g., from 100 to 150 percent.

4. Apply a combination of methods to the size standards question. For example, a two-tiered formula that employs the primarily engaged criterion (alternative 1) as well as an additional requirement that it and each affiliate not exceed its own size standard.

These alternatives are by no means exclusive. SBA would appreciate and will take into consideration all comments when making its proposed rulemaking.

Dated: April 18, 1979.

A. Vernon Weaver,
Administrator.

[FR Doc. 79-12496 Filed 4-20-79; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Part 71]

Transition Area; Proposed Alteration: McAlester, Okla.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The nature of the action being taken is to propose alteration of a transition area at McAlester, Okla. The intended effect of the proposed action is to provide additional controlled airspace for aircraft executing a new instrument approach procedure to the McAlester Municipal Airport. The circumstance which created the need for the action is the establishment of a partial instrument landing system (ILSP) and a nondirectional radio beacon (NDB) to Runway 01. In addition, higher performance aircraft are utilizing the airport requiring additional controlled airspace for their protection.

DATES: Comments must be received on or before May 23, 1979.

ADDRESSES: Send comments on the proposal to: Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101.

The official docket may be examined at the following location: Airspace Docket No. 79-ASW-10, Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, Texas.

An information docket may be examined at the Office of the Chief, Airspace and Procedures Branch, Air Traffic Division.

FOR FURTHER INFORMATION, CONTRACT: Kenneth L. Stephenson, Airspace and Procedures Branch, ASW-535, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone (817) 624-4911, extension 302.

SUPPLEMENTARY INFORMATION: Subpart G 71.181 (44 FR 442) of FAR Part 71 contains the description of transition areas designated to provide controlled airspace for the benefit of aircraft conducting IFR activity. Alteration of the transition area at McAlester, Okla., will necessitate an amendment to this subpart.

Comments Invited

Interested persons may submit such written data, views, or arguments as they may desire. Communications should be submitted in triplicate to Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101. All communications received on or before May 23, 1979, will be considered before action is taken on the proposed amendment. No public hearing is contemplated at this time, but arrangements for informal conferences with Federal Aviation Administration officials may be made by contracting the Chief, Airspace and Procedures Branch. Any data, views or arguments presented during such conferences must also be submitted in writing in accordance with this notice in order to become part of the record for consideration. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available,

both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rule making (NPRM) by submitting a request to the Chief, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101, or by calling (817) 624-4911, extension 302. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should contact the office listed above.

The Proposal

The FAA is considering an amendment to Subpart G of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area at McAlester, Okla. The FAA believes this action will enhance IFR operations at the McAlester Municipal Airport by providing additional controlled airspace for aircraft executing proposed instrument approach procedures using the proposed ILSP and NDB to Runway 01. Subpart G of Part 71 was republished in the Federal Register on January 2, 1979 (44 FR 442).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend 71.181 or Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as republished (44 FR 422) by altering the McAlester, Okla., transition area to read as follows:

McAlester, Okla.

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the McAlester Municipal Airport (latitude 34°53'05" N., longitude 95°46'55" W.).

(Sec. 307(a) Federal Aviation Act of 1958 (49 U.S.C. 1348(a); and Sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)).)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation.

Issued in Fort Worth, Texas, on April 10, 1979.

Henry N. Stewart,
Acting Director, Southwest Region.

[Airspace Docket No. 79-ASW-10]

[FR Doc. 79-12577 Filed 4-20-79; 8:45 am]

BILLING CODE 4910-13-M

[14 CFR Parts 71 and 73]

Establishment of Temporary Restricted Areas and Alteration of Continental Control Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish temporary joint use restricted areas in the Yakima, Wash., area to contain a military joint readiness exercise called Brave Shield 20. This proposed action would provide for the safe and efficient use of the navigable airspace by prohibiting unauthorized flight operations of nonparticipating aircraft within the temporary restricted area during the hours this area is activated August 16 through August 23, 1979.

DATES: Comments must be received on or before May 23, 1979.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Northwest Region, Attention: Chief, Air Traffic Division, Docket No. 79-NW-2, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Wash. 98108.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC-24), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis W. Still, Airspace Regulations Branch (ATT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D. C. 20591; telephone: (202) 426-8525.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Northwest Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Wash. 98108. All communications received on or before May 23, 1979, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examinatin by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering amendments to Subpart B of Part 73 and Subpart D of Part 71 of the Federal Aviation Regulations (14 CFR Parts 73 and 71) that would designate temporary restricted areas identified as R-6714A, R-6714B, R-6714C, R-6714D, R-6714E, R-6714F, R-6714G, and R-6714H in the Fort Lewis/Yakima, Wash., area to contain a military joint service exercise known as Brave Shield 20. Since these restricted areas would penetrate the Continental Control Area, they would be added to Subpart D of Part 71 to provide controlled airspace for the duration of their designation. Participating aircraft will be conducting close air support, air defense, tactical airlift, unconventional warfare missions and aerial delivery of personnel and supplies. Accomplishment of these missions will require maneuvering through a wide range of altitudes and airspeeds. The majority of air activity will be within the Yakima Firing Center Reservation permanently designated as R-6714A/B/C/D. Approximately 240 aircraft (fixed/rotary) are expected to participate.

The restricted areas would be designated as joint use and IFR/VFR operations within the areas may be authorized by the controlling agency when not in use by the using agency. The controlling agency for the proposed restricted areas would be the FAA, Seattle Air Route Traffic Control Center (ARTCC), Seattle, Wash. In addition, a

Tactical Air Control System (TACS) will be established to provide procedures to accommodate to the maximum extent possible, civil aviation interests so as not to cause undue hardship. Participating aircraft will be controlled by TACS to provide adequate clearance from nonparticipating aircraft. Lines of communication will be installed with appropriate FAA facilities to coordinate movement of nonparticipating air traffic through the areas when exercise activity permits. In addition, local business phone numbers (reverse charge) will be established and published for coordination of nonparticipating aircraft. Vantage, Wash., municipal airport will be given relief from the exercise by excluding from the temporary restricted area that airport at and below 2,200 feet MSL within 1½ mile radius of the airport. In addition, an access corridor would be established extending northbound from Vantage Airport, conforming to boundaries of the Columbia River to the northern boundary of the exercise airspace.

For compliance with the National Environmental Protection Act (NEPA), Headquarters Tactical Air Command will act as lead agency. Comments on environmental aspects relating to the proposed temporary restricted airspace should be addressed to Headquarters Tactical Air Command/DOXXE, Langley AFB, Va. 23365, Attention: Major Jim Fauske; telephone: (804) 764–4719/3934 or AUTOVON 432–4719/3934.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 73 of the Federal Aviation Regulations (14 CFR Parts 71 and 73) as republished (44 FR 344 and 716) as follows:

Under § 71.151 (44 FR 344) the following temporary restricted areas are added for the duration of their time of designation from 0001 local time August 16, 1979, to 2359 local time August 23, 1979.

R–6714C Brave Shield 20, Wash.
R–6714F Brave Shield 20, Wash.
R–6714G Brave Shield 20, Wash.
R–6714H Brave Shield 20, Wash.

Under § 73.67 (44 FR 716) the following temporary restricted areas are added:

R–6714E Brave Shield 20, Wash.
Boundaries. Beginning at Lat. 46°37'00"N, Long. 120°20'00"W.; to Lat. 46°39'00"N., Long. 120°29'00"W.; to Lat. 46°45'00"N., Long. 120°38'00"W.; to Lat. 46°56'00"N., Long. 120°31'00"W.; to Lat. 46°59'00"N., Long. 119°57'00"W.; to Lat. 46°54'30"N., Long. 120°15'00"W.; along the western boundary of R–6714A to point of beginning.
Designated altitudes. 200 feet AGL up to and including 6,000 feet MSL.
Time of designation. Continuous, 0001 August 16 to 2359, local time, August 23, 1979.
Controlling agency. Federal Aviation Administration, Seattle ARTC Center.
Using agency. U.S. Air Force Tactical Air Command/USAF Readiness Command TAC/USAFRED), Langley Air Force Base, Va. 23665.

R–6714F Brave Shield 20, Wash.
Boundaries. Beginning at Lat. 46°59'00"N., Long. 119°57'00"W.; to Lat. 46°58'00"N., Long. 119°19'00"W.; to Lat. 46°52'00"N., Long. 119°15'00"W.; to Lat. 46°49'00"N., Long. 119°15'00"W.; to point of beginning.
Designated altitudes. 15,000 feet MSL up to and including FL 200.
Time of designation. Continuous, 0001 August 16 to 2359, local time, August 23, 1979.
Controlling agency. Federal Aviation Administration, Seattle ARTC Center.
Using agency. U.S. Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED), Langley Air Force Base, Va. 23665.

R–6714G Brave Shield 20, Wash.
Boundaries. Beginning at Lat. 46°54'30"N., Long. 120°15'00"W.; to Lat. 46°59'00"N., Long. 119°57'00"W.; to Lat. 46°49'00"N., Long. 119°15'00"W.; to Lat. 46°46'00"N., Long. 119°15'00"W.; to Lat. 46°46'00"N., Long. 119°03'00"W.; to Lat. 46°40'00"N., Long. 119°57'00"W.; to Lat. 46°39'00"N., Long. 119°22'00"W.; to Lat. 46°27'00"N., Long. 119°41'00"W.; to Lat. 46°33'00"N., Long. 120°09'00"W.; thence along the southern boundaries of R–6714C/B and the eastern boundaries of R–6714B/A to the point of the beginning, but excluding the airspace at and below 2,200 feet MSL within a 1½ NM radius of Vantage, Wash., Airport, and within a corridor extending northward from the airport and conforming to the boundaries of the Columbia River.
Designated altitudes. 200 feet AGL up to and including FL 200.
Time of designation. Continous, 0001 August 16 to 2359, local time, August 23, 1979.
Controlling agency. Federal Aviation Administration, Seattle ARTC Center.
Using agency. U.S. Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED), Langley Air Force Base, Va. 23665.

R–6714H Brave Shield 20, Wash.
Boundaries. Beginning at Lat. 46°27'00"N., Long. 119°41'00"W.; to Lat. 46°39'00"N., Long. 119°22'00"W.; to Lat. 46°40'00"N., Long. 118°57'00"W.; to Lat. 46°20'00"N., Long. 119°15'00"W.; to point of beginning.
Designated altitudes. 15,000 feet MSL up to and including FL 200.
Time of designation. Continuous, 0001 August 16 to 2359, local time, August 23, 1979.
Controlling agency. Federal Aviation Administration, Seattle ARTC Center.
Using agency. U.S. Air Force Tactical Air Command/USAF Readiness Command (TAC/USAFRED), Langley Air Force Base, Va. 23665.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65.)

Note.— The FAA has determined that this document involves a proposed regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C., on April 10, 1979.

William E. Broadwater,
Chief, Airspace and Air Traffic Rules Division.

[Airspace Docket No. 79–NW–2]
[FR Doc. 79–12463 Filed 4–20–79; 8:45 am]
BILLING CODE 4910–13–M

[14 CFR Part 73]

Proposed Temporary Designation and Alteration of Restricted Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to designate a temporary restricted area in the vicinity of Fort Lewis, Wash., and alter the Fort Lewis restricted areas R–6703A, B, C, and D temporarily by changing their upper limits to include 9,000 feet MSL to contain a major military exercise (Brave Shield 20). This proposed action would provide for the safe and efficient use of the navigable airspace by prohibiting unauthorized flight operations of nonparticipating aircraft within the joint use restricted airspace during the proposed time the areas are in use from August 16 to August 23 inclusive.

DATES: Comments must be received on or before May 23, 1979.

ADDRESSES: Send comments on the proposal in triplicate to: Director, FAA Northwest Region, Attention: Chief, Air Traffic Division, Docket No. 79–NW–3, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Wash. 98108.

The official docket may be examined at the following location: FAA Office of the Chief Counsel, Rules Docket (AGC–24), Room 916, 800 Independence Avenue, SW., Washington, D.C. 20591.

An informal docket may be examined at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT:
Mr. Everett L. McKisson, Airspace Regulations Branch (AAT-230), Airspace and Air Traffic Rules Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-3715.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons may participate in the proposed rulemaking by submitting such written data, views or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Northwest Region, Atttention: Chief, Air Traffic Division, Federal Aviation Administration, FAA Building, Boeing Field, Seattle, Wash. 98108. All communications received on or before May 23, 1979, will be considered before action is taken on the proposed amendment. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

Availability of NPRM

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue, SW., Washington, D.C. 20591, or by calling (202) 426-8058. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11-2 which describes the application procedures.

The Proposal

The FAA is considering an amendment to § 73.67 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) to designate a temporary restricted area identified as R-6703E and to alter the upper limits of R-6703A, R-6703B, R-6703C, and R-6703D, during the time required for a military exercise, (Brave Shield 20). Temporary restricted area R-6703E, would include the airspace that is presently known as Military Operations Area (MOA) Rainier 1, Rainier 2 and Rainier 3. The upper limits of R-6703A, B, C and D would return to their present position after the exercise.

Brave Shield 20 is a coordinated United States Readiness Command (USREDCOM) sponsored joint readiness exercise scheduled to be conducted in the Yakima Firing Center/Fort Lewis, Washington, area, 11-29 August 1979. Participating aircraft will be conducting close air support, air defense, tactical airlift, unconventional warfare missions and aerial delivery of personnel/supplies. Accomplishment of these missions will require maneuvering through a wide range of altitudes and airspeeds. The air activity at Fort Lewis will be within the boundaries of the joint use temporary restricted airspace.

Scheduling of aircraft into the Fort Lewis temporary restricted airspace will be the responsibility of Tactical Air Control Center at Fort Lewis. Control of aircraft within the Fort Lewis temporary restricted airspace will be accomplished by the McChord Radar Approach Control. Approximately 240 aircraft will participate in the exercise.

Lines of communications will be installed with appropriate FAA facilities in order to coordinate movement of non-exercise air traffic through the exercise area when activity permits. In addition, local business phone numbers (reverse charge) will be established and published for coordination of non-exercise air traffic. In the description of R-6703E, the airspace below 2,000 feet above ground would be excluded within one nautical mile (NM) of the center of the town of Yelm and ½ NM of the center of Roy. The airspace below 1,000 feet above the ground would be excluded within ½ NM of the center of the towns of Nisqually and Rainier. The airspace below 1,000 feet above ground would be excluded within ½ NM of the center of the Flying Carpet Airport and within one NM of the center of Western Airpark.

Headquarters Tactical Air Command has provided Certification that the requirements of NEPA have been met, and will serve as lead agency for purposes of compliance with NEPA for this airspace proposal. Comments on environmental aspects relating to the proposed Temporary Restricted Airspace and/or USAF air activities to be conducted within the exercise airspace should be addressed to: Headquarters Tactical Air Command/DOXXE, Langley AFB, Va. 23365, Attention: Major Jim Fauske, telephone: (804) 764-4719/3934.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration purposes to amend § 73.67 of Part 73 of the Federal Aviation Regulations (14 CFR Part 73) as republished (44 FR 716) as follows:

1. In R-6703 Subarea A, under Designated altitudes, "except from 0001 PDT August 16 to 0001 PDT August 24, 1979, during which time it is surface to 9,000 feet MSL." is added.

2. In R-6703 Subarea B, under Designated altitudes, "except from 0001 PDT August 16 to 0001 PDT August 24, 1979, during which time it is surface to 9,000 feet MSL." is added.

3. In R-6703 Subarea C, under Designated altitudes, "except from 0001 PDT August 16 to 0001 PDT August 24, 1979, during which time it is surface to 9,000 feet MSL." is added.

4. In R-6703 Subarea D, under Designated altitudes, "except from 0001 PDT August 16 to 0001 PDT August 24, 1979, during which time it is surface to 9,000 feet MSL." is added.

5. In R-6703 Subarea E is added as follows:

Boundaries. Beginning at Lat. 47°04'35" N., Long. 122°41'05" W.; to Lat. 47°04'21" N., Long. 122°42'15" W.; to Lat. 46°59'47" N., Long. 122°47'00" W.; to Lat. 46°54'23" N., Long. 122°47'07" W.; to Lat. 46°52'50" N., Long. 122°44'07" W.; to Lat. 46°52'50" N., Long. 122°42'05" W.; to Lat. 46°54'11" N., Long. 122°39'12" W.; to Lat. 46°54'50" N., Long. 122°35'26" W.; to Lat. 46°56'07" N., Long. 122°34'11" W.; to Lat. 46°56'33" N., Long. 122°33'09" W.; to Lat. 46°59'43" N., Long. 122°32'32" W.; to Lat. 47°01'00" N., Long. 122°31'37" W.; to Lat. 47°01'48" N., Long. 122°31'36" W.; to Lat. 47°03'38" N., Long. 122°35'36" W.; to Lat. 47°04'42" N., Long. 122°38'15" W.; to points of beginning. Excluding the airspace 2,000 feet AGL and below within a 1NM radius of the center of the town of Yelm (Lat. 46°56'30" N., Long 122°36'20" W.) and within a ½ NM radius of the center of the town of Roy, (Lat. 47°05'00" N., Long 122°32'30" W.); the airspace 1,000 feet AGL and below within a ½ NM radius of the center of the town of Nisqually, (Lat. 47°03'40" N., Long 122°41'50" W.) and within a ½ NM radius of the center of the town of Rainier, (Lat. 46°53'10" N., Long 122°41'05" W.) and within a 1NM radius of the center of the Western Airspark Airport, (Lat. 46°55'29" N., Long 122°33'02" W.) and within a ½ NM radius of the center of the Flying Carpet Airport, (Lat. 46°57'55" N., Long 122°47'45" W.).

Designated altitudes. 500 feet AGL to an including 9,000 feet MSL.

Time of designation. From 0001 PDT August 16 to 0001 PDT August 24, 1979.

Controlling agency. Federal Aviation Administration, McChord Approach Control.

Using agency. U.S. Air Force Tactical/Readiness Command, Langley AFB, Va.

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.65)

Note.—The FAA has determined that this document involves a proposed regulation which is not significant under Executive

Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an established body of technical requirements for which frequent and routine amendments are necessary to keep them operationally current, and promote safe flight operations, the anticipated impact is so minimal that this action does not warrant preparation of a regulatory evaluation and a comment period of less than 45 days is appropriate.

Issued in Washington, D.C. on April 16, 1979.

William E. Broadwater,
Chief, Airspace and Air Traffic Rules Division.

[Airspace Docket No. 79-NW-3]
[FR Doc. 79-12464 Filed 4-20-79; 8:45 am]
BILLING CODE 4910-13-M

Materials Transportation Bureau

[49 CFR Part 171]

Matter Incorporated by Reference

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this notice of proposed rulemaking is to propose an update of the reference in 49 CFR 171.7(d)(1) to the ASME Boiler and Pressure Vessel Code in order to recognize the 1977 edition of the ASME Code and the addenda thereto through December 31, 1978.

DATES: Comments must be received on or before May 23, 1979.

ADDRESS: Send comments to: Dockets Branch, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590. It is requested that five copies be submitted.

FOR FURTHER INFORMATION CONTACT: Delmer F. Billings, Office of Hazardous Materials Regulation, Materials Transportation Bureau, Research and Special Programs Administration, 2100 Second Street, SW., Washington, D.C. 20590, (202) 755-4902.

SUPPLEMENTARY INFORMATION: The Compressed Gas Association, Inc., (CGA), has submitted a petition to update the ASME code reference in § 171.7(d). The CGA requested that the reference be updated through December 31, 1978. After review, the MTB has concluded that the latest code and addenda thereto may be referenced in § 171.7(d) with the exception of paragraph UW-11(a)(7). This paragraph substitutes ultrasonic testing of welds for X-ray testing. It is the MTB's opinion that ultrasonic testing should not be referenced since this test method and procedure must be further analyzed and evaluated before being incorporated as part of the reference.

In consideration of the foregoing, Title 49, Code of Federal Regulations, § 171.7(d)(1) would be revised to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *

(d) * * *

(1) ASME Code means section VIII (Division 1) and IX of the 1977 edition of the "American Society of Mechanical Engineers Boiler and Pressure Vessel Code," and addenda thereto through December 31, 1978, except paragraph UW-11(a)(7) of the code does not apply.

* * * * *

Authority: (49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53; 49 CFR Part 1, App. A and paragraph (a)(4) of App. A to Part 106).

Note.—The Materials Transportation Bureau has determined that this document does not contain a major proposal requiring the preparation of an Economic Impact Statement under Executive Order 11821 and DOT implementing procedures (43 FR 9583). A regulatory evaluation is available in the public docket.

Issued in Washington, D.C. on April 13, 1979.

Alan I. Roberts,
Associate Director for Hazardous Materials Regulation, Materials Transportation Bureau.

[Docket No. HM-22, Notice No. 79-5]
[FR Doc. 79-12462 Filed 4-20-79; 8:45 am]
BILLING CODE 4910-60-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

[24 CFR Part 570]

Community Development Block Grants, Program Benefit Requirements

AGENCY: Housing and Urban Development/Office of Assistant Secretary for Community Planning and Development.

ACTION: Notice of Transmittal.

SUMMARY: Under recently-enacted legislation the Chairman of the House Committee on Banking, Finance and Urban Affairs and the Senate Committee on Banking, Housing and Urban Affairs have requested the Secretary of Housing and Urban Development to provide their Committees with certain rules at least 15 days of continuous session prior to publication in the Federal Register. This Notice advises of the transmittal of specifically identified proposed rule(s) pursuant to such requests.

FOR FURTHER INFORMATION CONTACT: Burton Bloomberg, Director, Office of Regulations, Office of General Counsel, 451 Seventh Street, SW., Washington, D.C. 20410 (202) 755-6207.

SUPPLEMENTARY INFORMATION: Concurrently with issuance of this Notice, the Secretary is forwarding to the Chairman of both the Senate Banking, Housing and Urban Affairs Committee and the House Banking, Finance and Urban Affairs Committee the rulemaking document described below:

PART 570.302—COMMUNITY DEVELOPMENT BLOCK GRANTS—PROGRAM BENEFIT REQUIREMENTS

This interim rule revises how the Department will review Community Development Block Grant applications for program benefit to low and moderate income persons to comply with the Housing and Community Development Amendments of 1978.

(Section 7(o) of the Department of HUD Act 42 U.S.C. 3535 7(o), Section 324 of the Housing and Urban Development Amendments of 1978.)

Issued at Washington, D.C., April 10, 1979.

Patricia Roberts Harris,
Secretary, Department of Housing and Urban Development

[Docket No. R-79-655]
[FR Doc. 79-12440 Filed 4-20-79; 8:45 am]
BILLING CODE 4210-01-M

Office of the Assistant Secretary for Housing— Federal Housing Commissioner

[24 CFR Parts 880, 881, 883]

Security Deposit Provisions

Correction

In FR Doc. 79-9060 appearing on page 18249 in the issue for Tuesday, March 27, 1979, the date for the closing of the comment period given as "June 25, 1979" should have been "May 29, 1979".

[Docket No. R-79-620]
BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

Investment in U.S. Property by Controlled Foreign Corporations

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the exceptions to the definition of United States property under section 956 (b)(2) of the Internal Revenue Code of 1954. Changes in the applicable tax law were made by the Tax Reform Act of 1976. This document also contains proposed regulations under section 956 (c) which affect the computation of the investment of earnings in United States property by controlled foreign corporations. The regulations would provide the public with the guidance needed to comply with the Tax Reform Act of 1976 as well as guidance with respect to the clarification of existing regulations. The proposed amendments affect controlled corporations making certain investments in United States property and their United States shareholders.

DATES: Written comments and requests for a public hearing must be delivered or mailed by June 22, 1979. The amendments are proposed to be effective generally for taxable years of a foreign corporation beginning after December 31, 1975, and for taxable years of a United States shareholder within which or with which the taxable years of the controlled foreign corporation end.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–227–76), Washington, D.C. 20224

FOR FURTHER INFORMATION CONTACT: Donald K. Duffy of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202–566–3289, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 956 and 958 of the Internal Revenue Code of 1954. Certain amendments under sections 956(a), (b)(2), and 958 are proposed to conform the regulations to amendments made to the Code by section 1021 of the Tax Reform Act of 1976 (90 Stat. 1618). Other amendments to the regulations are intended to clarify existing regulations. The amendments under section 956(c) extend the circumstances under which a foreign corporation will be considered to have made a pledge or guarantee with respect to an obligation of a U.S. person. The proposed regulations are to be issued under the authority contained in sections 956(c) and 7805 of the Internal Revenue Code of 1954 (76 Stat. 1017; 26 U.S.C. 956 (c) and 68A Stat. 917; 26 U.S.C. 7805).

Discussion

A United States shareholder of a controlled foreign corporation is required, under certain circumstances, to include in its gross income its pro rata share of the controlled foreign corporation's increase in earninings invested in United States property. Section 956(b)(1) defines the term "United States property." Section 956(b)(2) provides for exceptions to that definition. Section 1021(a) of the Tax Reform Act of 1976 added two exceptions to the definition of United States property. These exceptions are contained in section 956(b)(2) (F) and (G) of the Internal Revenue Code of 1954. The amendments to paragraph (b) of § 1.956–2 conform the regulations to these changes.

Proposed § 1.956–2 (b)(1)(viii) provides that stock and obligations of a domestic corporation held or acquired by a foreign corporation in taxable years beginning after December 31, 1975, do not constitute United States property. However, this exception does not apply if the domestic corporation is either a United States shareholder of the controlled foreign corporation making the investment or a corporation 25 percent or more of whose total combined voting power is owned or considered as owned by United States shareholders of the controlled foreign corporation making the investment. The constructive ownership rules under section 958(b) apply for purposes of determining whether a person is a United States shareholder of a controlled foreign corporation.

Proposed § 1.956–2(b)(1)(ix) provides that movable drilling rigs or barges and other types of movable property when used on the Continental Shelf of the United States in the development and exploitation of our natural resources from or under ocean waters do not constitute United States property.

Proposed § 1.956–1(b)(2) is added to provide that the aggregate amount of United States property held by a controlled foreign corporation at the end of its taxable years beginning after December 31, 1975, includes only United States property as defined for taxable years beginning after that date, regardless of the time when the foreign corporation acquired the property. Further, the aggregate amount of United States property held at the close of a controlled foreign corporation's taxable year immediately preceding the taxable year which begins after December 31, 1975, similarly includes only United States property as defined for taxable years beginning after that date. Paragraph (b)(2) applies only for purposes of computing the dividend limitation under § 1.956–1(b)(1) when determining a controlled foreign corporation's increase in earnings invested in United States property for its taxable years beginning after December 31, 1975.

Proposed § 1.958–2(a) amends the regulations to provide for the application of the constructive ownership rules under section 958(b) for purposes of determining whether 25 percent or more of the total combined voting power of a domestic corporation is considered as owned by United States shareholders of a controlled foreign corporation. However, paragraphs (b)(3) and (d)(2) of proposed § 1.958–2 amend the regulations to provide that section 958(b) (1) and (4) do not apply for this purpose. The effect of this is to allow stock owned by a nonresident alien or a foreign corporation to be attributed to United States persons in certain situations.

Proposed § 1.956–2(c)(2) is added to amplify and clarify the treatment of pledges and guarantees under existing regulations and generally provides that indirect pledges or guarantees may be included in a controlled foreign corporation's aggregate investment in U.S. property. The amendment is proposed to be effective for taxable years of the corporation ending after [30 days after the date final regulations are published as a Treasury decision in the Federal Register].

Proposed § 1/956–2(c)(3) also amplifies the treatment of pledges and guarantees and provides that a controlled foreign corporation will be considered a pledgor or guarantor of the obligation of a U.S. person if the corporation facilitates a loan to, or borrowing by, that person.

Other changes in the regulations are of a technical or conforming nature.

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Donald K. Duffy of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Proposed amendments to the regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Paragraph 1. Section 1.956 is deleted.

§ 1.956 [Deleted].

Par. 2. Paragraph (b) of § 1.956–1 is amended by redesignating subparagraphs (b) (2) and (3) as subparagraph (3) and (4), respectively, and by adding new subparagraph (2) to read as set out below:

§ 1.956–1 Shareholder's pro rata share of a controlled foreign corporation's increase in earnings invested in United States property.

* * * * *

(b) *Amount of a controlled foreign corporation's investment of earnings in United States property.* * * *

(2) *Aggregate amount of United States property.* For purposes of paragraph (b)(1) of this section, the aggregate amount of United States property held by a controlled foreign corporation at the close of—

(i) Its taxable years beginning after December 31, 1975, and

(ii) Its last taxable year beginning before January 1, 1976,

includes only that amount which would have constituted an investment in United States property computed as if that corporation had acquired (within the meaning of paragraph (d)(1) of § 1.956–2) the property after December 31, 1975. The rules of this subparagraph apply only for purposes of determining an increase in earnings invested in United States property for any taxable year of a controlled foreign corporation beginning after December 31, 1975. See paragraph (c)(1) of this section.

* * * * *

Par. 3. Section 1.956–2 is amended as follows:

1. Paragraph (b)(1) is amended by redesignating subdivision (viii) as subdivision (x) and by adding subdivisions (viii) and (ix) as set forth below.

2. Paragraph (c) is amended as follows:

a. Subparagraph (1) is amended by deleting "subparagraph (2)" from the first sentence and by inserting in lieu thereof "subparagraph (4)", and by deleting the last sentence and the examples.

b. Subparagraph (2) is redesignated as subparagraph (4) and new subparagraphs (2), (3), and (5) are added to read as set forth below.

3. Paragraph (d)(1)(i) is revised by deleting "of paragraph (a)" from the first sentence, and by revising paragraph (d)(1)(i)(*b*) to read as set forth below.

4. Paragraph (d)(2) is revised by deleting "of paragraphs (a)(1)(iii) and (b)(1)(v)" from the first sentence.

§ 1.956–2 Definition of United States property.

* * * * *

(b) *Exceptions*—(1) *Excluded property.*

* * * * *

(viii) For taxable years of a foreign corporation beginning after December 31, 1975, the voting or nonvoting stock or obligations of an unrelated domestic corporation. For purposes of this subdivision, an unrelated domestic corporation is a domestic corporation which is neither a United States shareholder (as defined in section 951(b)) of a controlled foreign corporation making the investment, nor a corporation 25 percent or more of whose total combined voting power of all classes of stock entitled to vote is owned or considered as owned (within the meaning of section 958(b)) by United States shareholders of the controlled foreign corporation making the investment. The determination of whether a domestic corporation is an unrelated corporation is made immediately after each acquisition of stock or obligations by the foreign corporation.

(ix) For taxable years of a foreign corporation beginning after December 31, 1975, movable drilling rigs or barges and other movable exploration and exploitation equipment (other than a vessel or an aircraft) when used on the Continental Shelf (as defined in section 638) of the United States in the exploration, development, removal or transportation of natural resources from or under ocean waters. In general, the type of property which qualifies for the exception under this subdivision is described in section 48(a)(2)(B)(x) (without reference to section 50).

* * * * *

(c) *Treatment of pledges and guarantees*—(1) *General rule.* * * *

(2) *Indirect pledge or guarantee.* If the assets of a controlled foreign corporation serve at any time, either directly or indirectly, as security for the performance of an obligation of a United States person, then, for purposes of paragraph (c)(1) of this section, the controlled foreign corporation will be considered a pledgor of guarantor of that obligation. This paragraph (c)(2) applies only to pledges and guarantees which are made in a taxable year of a controlled foreign corportion beginning after December 31, 1975, and which are outstanding at the close of the taxable year of a controlled foreign corporation ending after [30 days after the date this notice is published in the Federal Register as a Treasury decision]. If this paragraph (c)(2) applies, a controlled foreign corporation will be considered a pledgor or guarantor of the obligation of a United States person only for its taxable years ending after [30 days after the date this notice is published in the Federal Register as a Treasury decision].

(3) *Facilitation of borrowing.* If the assets of a controlled foreign corporation do not serve as security for the performance of an obligation of a United States person under paragraph (c)(2) of this section, but the controlled foreign corporation otherwise facilitates a loan to, or borrowing by, that person, the corporation will be considered a pledgor or guarantor of the obligation of a United States person under paragraph (c)(1) of this section. For example, where the assets of a controlled foreign corporation serve as an inducement, consideration, compensating balance, or other accommodation for the extension of a loan to, or the continued carrying of a preexisting loan by, a United States person, the corporation will be considered to have facilitated a loan to, or borrowing by, that person. This paragraph (c)(3) applies for taxable years of a controlled foreign corporation beginning after December 31, 1975.

* * * * *

(5) *Illustrations.* The following examples illustrate the application of this paragraph (c):

Example (1). A, a United States person, borrows $100,000 from a bank in foreign country X on December 31, 1964. On the same date controlled foreign corporation R pledges it assets as security for A's performance of his obligation to repay such loan. The place at which or manner in which A uses the money is not material. For purposes of paragraph (b) of § 1.956–1, R Corporation will be considered to hold A's obligation to repay the bank $100,000, and, under the provisions of paragraph (e)(2) of § 1.956–1, the amount taken into account in computing R Corporation's aggregate investment in United States property on December 31, 1964, is the unpaid principal amount of the obligation on that date ($100,000).

Example (2). The facts are the same as in example (1), except that R Corporation

participates in the transaction, not by pledging its assets as security for A's performance of his obligation to repay the loan, but by agreeing to buy for $100,000 at maturity the note representing A's obligation if A does not repay the loan. Separate arrangements are made with respect to the payment of the interest on the loan. The agreement of R Corporation to buy the note constitutes a guarantee of A's obligation. For purposes of paragraph (b) of § 1.956–1, R Corporation will be considered to hold A's obligation to repay the bank $100,000, and, under the provisions of paragraph (e)(2) of § 1.956–1, the amount taken into account in computing R Corporation's aggregate investment in United States property on December 31, 1964, is the unpaid principal amount of the obligation on that date ($100,000).

Example (3). A, a United States person, owns all of the stock of X, a controlled foreign corporation. A and X use the calendar year as their taxable year. A borrows $100,000 from a bank on December 10, 1981, and pledges all the stock of X as collateral for the loan. The book value of X's assets on this date is $200,000. In the loan agreement, among other things, A agrees not to cause or permit X Corporation to do any of the following without the consent of the bank:

(a) Borrow money or pledge assets, except as to borrowings in connection with the principal business of X Corporation;

(b) Guarantee, assume, or become liable on the obligation of another, or invest in or lend funds to another;

(c) Merge or consolidate with any other corporation or transfer shares of any controlled subsidiary;

(d) Sell or lease (other than in the ordinary course of business) or otherwise dispose of any substantial part of its assets;

(e) Pay or secure any debt owing by X Corporation to A; and

(f) Pay any dividends, except in such amounts as may be required to make interest or principal payments on A's loan from the bank.

A retains the right to vote and to exercise consensual powers pertaining to the X stock unless a default occurs by A. Under paragraph (c)(2) of this section, the assets of X Corporation serve indirectly as security for A's performance of his obligation to repay the loan and X Corporation will be considered a pledgor or guarantor with respect to that obligation. For purposes of paragraph (b) of § 1.956–1, X Corporation will be considered to hold A's obligation to repay the bank $100,000 and under paragraph (e)(2) of § 1.956–1, the amount taken into account in computing X Corporation's aggregate investment in United States property on December 31, 1981, is the unpaid principal amount of the obligation on that date.

Example (4). The facts are the same as in example (3) with the following additions and modifications. A borrows $100,000 from a bank on December 10, 1976, and pledges all the stock of X as collateral for the loan. X Corporation has no other investments in U.S. property. Under paragraph (c)(2) of this section, and paragraph (c)(1)(ii) of § 1.956–1, X Corporation has no earnings invested in U.S. property at the close of its taxable year ended December 31, 1976. However, if the pledge or guarantee remains outstanding at the close of the first taxable year of X Corporation ending after the last date described in paragraph (c)(2) of this section, the foreign corporation will be considered a pledgor or guarantor of the obligation of a U.S. person and the amount taken into account under paragraph (c)(1)(ii) of § 1.956–1 is described in paragraph (c)(2) of § 1.956–1. No amount will be taken into account under paragraph (c)(1)(i) of § 1.956–1 in the preceding taxable year on account of the pledge or guarantee.

Example (5). A, a United States person, owns all of the stock of Y, a controlled foreign corporation. United States person A and controlled foreign corporation Y both use the calendar year as a taxable year. Y Corporation is engaged in providing working capital and funds for the expansion of A's business both in the United States and abroad through its various affiliates. In recent years, A has experienced financial difficulties as a result of its United States operations. On December 15, 1976, Y Corporation makes a deposit in an unrelated domestic financial institution in the amount of $100,000. Shortly thereafter, A borrows $100,000 from the same financial institution. The rate of interest earned by Y on its deposit and the rate of interest charged A on its loan differ by a fraction of 1 percent. Although the deposit by Y Corporation was nominally designated a demand deposit, the funds were not withdrawn by Y until A repaid the amount it had borrowed. Since the facts indicate that Y facilitated the loan to A, a U.S. person, under paragraph (c)(3) of this section Y will be considered a pledgor or guarantor of the obligation of A. Y Corporation would likewise be considered a pledgor or guarantor if Y's deposit followed, rather than preceded, the loan to A. See paragraph (e)(2) of § 1.956–1 for purposes of determining the amount of the investment in U.S. property on December 31, 1976.

* * * * *

(d) *Definitions*—(1) *Meaning of "acquired"*—(i) *Applicable rules.* For purposes of this section * * *

(b) Property which is an obligation of a United States person with respect to which a controlled foreign corporation is a pledgor or guarantor (within the meaning of paragraph (c) of this section) shall be considered acquired when the corporation assumes liability as a pledgor or guarantor or is otherwise considered a pledgor or guarantor (within the meaning of paragraph (c)(2) or (c)(3) of this section); and

* * * * *

Par. 4. Section 1.958 is deleted.

§ 1.958 [Deleted]

Par. 5. Section 1.958–2 is amended as follows:

1. The first sentence of paragraph (a) is revised as set out below.

2. Subparagraph (b)(3) is amended by adding a new sentence immediately after the first sentence as set forth below.

3. Subparagraph (d)(2) is amended by adding a new sentence immediately after the first sentence as set forth below.

§ 1.958–2 Constructive ownership of stock.

(a) *In general.* Section 958(b) provides that, for purposes of sections 951(b), 954(d)(3), 956(b)(2), and 957, the rules of section 318(a) as modified by section 958(b) and this section shall apply to the extent that the effect is to treat a United States person as a United States shareholder within the meaning of section 951(b), to treat a person as a related person within the meaning of section 954(d)(3), to treat the stock of a domestic corporation as owned by a United States shareholder of a controlled foreign corporation under section 956(b)(2), or to treat a foreign corporation as a controlled foreign corporation under section 957. * * *

(b) *Members of family.* * * *

(3) *Stock owned by nonresident alien individual.* * * * However, this limitation does not apply for purposes of determining whether the stock of a domestic corporation is owned or considered as owned by a United States shareholder under section 956(b)(2) and § 1.956–2(b)(1)(viii). * * *

* * * * *

(d) *Attribution to partnerships, estates, trusts, and corporations.* * * *

(2) *Limitation.* * * * This limitation does not apply for purposes of determining whether the stock of a domestic corporation is owned or considered as owned by a United States shareholder under section 956(b)(2) and § 1.956–2(b)(1)(viii). * * *

* * * * *

Jerome Kurtz,
Commissioner of Internal Revenue.

[LR–227–78]
[FR Doc. 79–12414 Filed 4–20–79; 8:45 am]
BILLING CODE 4830–01–M

[26 CFR Part 1]

Exclusion From Subpart F Income of Certain Earnings of Insurance Companies

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to the exclusion from subpart F income of certain earnings of insurance companies. The proposed regulations

would conform the regulations to changes made by the Tax Reform Act of 1976 and make certain related clarifying changes to the regulations. The regulations will provide the guidance needed to comply with that Act and will affect all United States shareholders under subpart F owning stock of controlled foreign corporations which are insurance companies.

DATES: Written comments and requests for a public hearing must be delivered or mailed by June 22, 1979. The amendments are proposed to be effective, where indicated, for taxable years of foreign corporations beginning after December 31, 1975.

ADDRESS: Send written comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T (LR–226–76), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Donald K. Duffy, of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, Attention: CC:LR:T, 202–566–3289, not a toll-free call.

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 954(c)(3) of the Internal Revenue Code of 1954. These amendments are proposed to clarify existing regulations under section 954(c)(3)(B) and to conform the regulations to section 1023 of the Tax Reform Act of 1976 (90 Stat. 1620). The amendments are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Description of Proposed Regulations

Section 954(c)(3)(B) provides, in pertinent part, that foreign personal holding company income under subpart F does not include certain dividends, interest, and gains derived from investments made by a controlled foreign corporation which is an insurance company of its unearned premiums or reserves which are ordinary and necessary for the proper conduct of its insurance business. Income eligible for this exclusion must be received from a person other than a related person. Existing regulations under § 1.954–2(d)(3) fail to establish a rule for computation of the amount of the exclusion. Proposed regulations under § 1.954–2(d)(3) correct this failure and provide that the amount excludable is limited to a portion of eligible income derived from investment of that proportionate amount of controlled foreign corporation's total assets which is equal to its unearned premiums and reserves. The proposed amendment defines eligible income as dividends, interest, and the excess of gains over losses from sales or exchanges if stock or securities, other than amounts taxed to United States shareholders under section 952(a)(1), relating to income derived from the insurance of United States risks, and other than amounts received from related persons.

A new subparagraph (4) is proposed for addition to § 1.954–2(d) of the regulations under section 954(c) to reflect the enactment of section 1023 of the Tax Reform Act of 1976 which added an exclusion from foreign personal holding company income. This added exclusion generally parallels the exclusion under section 954(c)(3)(B) and § 1.954–2(d)(3). However, the amount excludable is limited to a portion of eligible income derived from investment of that proportionate amount of a controlled foreign corporation's total assets which is equal to one-third of premiums earned on casualty insurance contracts which are not directly or indirectly attributable to the insurance or reinsurance of risks of related persons. Proposed § 1.954–2(d)(4) defines eligible income as it is defined in proposed § 1.954–2(d)(3) reduced, however, by the income excluded under section 854(c)(3)(B) and § 1.954–2(d)(3).

The proposed regulations would provide affected United States shareholders with the guidance necessary to determine the amounts properly excludable under section 954 (c)(3) (B) and (C).

Comments and Requests for a Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is to be held, notice of the time and place will be published in the Federal Register.

Drafting Information

The principal author of these proposed regulations is Donald K. Duffy, of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Proposed Amendments to the Regulations

The proposed amendments to 26 CFR Part 1 are as follows:

Section 1.954–2 is amended by revising paragraph (d)(3)(i), by adding a new subdivision (iii) to paragraph (d)(3), and by adding a new subparagraph (4) to paragraph (d). These revised and added provisions read as follows:

§ 1.954–2 Foreign personal holding company income.

* * * * *

(d) *Certain income received from unrelated persons in the active conduct of a trade or business.* * * *

(3) *Dividends, interest, and gains on securities derived by insurance companies from investments of unearned premiums or reserves—*

(i) *In general.* Foreign personal holding company income of a controlled foreign corporation which is an insurance company does not include an amount which bears the same ratio to its eligible income as the mean of the corporation's unearned premiums and reserves which are ordinary and necessary for the proper conduct of its insurance business at the beginning and end of the taxable year bears to the mean of the total assets held by the corporation at the beginning and end of the taxable year. For purposes of this paragraph (d)(3), the mean of the total assets held is determined under the principles of section 805 (b) and § 1.805–5. Paragraph (d)(3)(iii) of this section defines the term "eligible income". Although the name, charter powers, and subjection to the insurance laws of a foreign country are significant in determining the business which a controlled foreign corporation is authorized and intends to carry on, the character of the business actually done in the taxable year shall determine whether it is an insurance company for purposes of section 954(c)(3)(B). The term "unearned premium," as used in this subparagraph, means the amount which will cover the cost of carrying the insurance risk for the period for which the premium has been paid in advance.

* * * * *

(iii) *Eligible income.* Eligible income equals the total amount of the dividends, interest, or the excess of gains over losses from sales or exchanges of stock or securities, reduced by the following amounts:

(A) The dividends, interest, or the excess of gains over losses described in this paragraph (d) (3) (iii) which are taxed under section 952 (a) (1). See section 953 and § 1.953–1 (a). This reduction shall be apportioned ratably between dividends and interest received from, or the excess of gains over losses from sales or exchanges to or with, related and unrelated persons (as defined in § 1.954–1 (e)); and

(B) The dividends, interest, or the excess of gains over losses described in this paragraph (d) (3) (iii) which are received from, or derived from sales or exchanges to or with, related persons (as defined in § 1.954–1 (e) (1)). This reduction is determined after the application of (A) of this subdivision (iii).

(4) *Dividends, interest, and gains on securities derived by insurance companies from investments of earned premiums*—(i) *In general.* Foreign personal holding company income of a controlled foreign corporation which is an insurance company does not include an amount which bears the same ratio to its eligible income as one-third of certain of its earned premiums bears to the mean of the total assets held by the corporation at the beginning and end of its taxable year. For purposes of this paragraph (d) (4) (i), the mean of the total assets held is determined under the principles of section 805 (b) and § 1.805–5. Subdivisions (ii) and (iii) of this paragraph (d) (4) define the terms "eligible income" and "earned premiums", respectively. For purposes of determining whether a controlled foreign corporation is an insurance company, see paragraph (d) (3) (i) of this section. This paragraph (d) (4) applies to taxable years of controlled foreign corporations beginning after December 31, 1975.

(ii) *Eligible income.* For purposes of this paragraph (d) (4), eligible income is the income determined under paragraph (d) (3) (iii) of this section, reduced by any income excluded under section 954 (c) (3) (B) and paragraph (d) (3) (i) of this section.

(iii) *Earned premiums.* Earned premiums are premiums earned on insurance contracts (other than life insurance and annuity contracts) during the taxable year and which are described in section 832 (b) (4), other than premiums which are directly or indirectly attributable to the insurance or reinsurance of risks of related persons (as defined in § 1.954–1 (e) (1)). In determining whether premiums are directly or indirectly so attributable, see subdivision (iv) of this paragraph (d) (4).

(iv) *Insurance or reinsurance of risks of related persons.* A premium is directly or indirectly attributable to the insurance or reinsurance of a risk of a related person if the premium is derived by an insurance company from the assumption or sharing of risk upon an insurance or reinsurance policy issued by a related person or from an arrangement by which all or a part of the policy risk of a related person is in effect transferred directly or indirectly through an unrelated person to the insurance company. If an insurance company participates in an insurance or reinsurance pool, whether there is joint liability on the risk with a related person is not determinative of whether the insurance company insured or reinsured the risk of a related person. If a premium is attributable in part to the insurance or reinsurance of a risk of a related person, and in part to other risks, the amount of the premium shall be apportioned on a reasonable basis.

* * * * *

Jerome Kurtz,
Commissioner of Internal Revenue.

[LR–226–76]
[FR Doc. 79–12513 Filed 4–20–79; 8:45 am]
BILLING CODE 4830–01–M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 81]

State of Maryland; Proposed Revision of the Section 107—Attainment Status Designations

AGENCY: Environmental Protection Agency.

ACTION: Proposed Rule.

SUMMARY: The State of Maryland has requested that EPA redesignate the attainment status for total suspended particulate matter (TSP) in the Luke, MD Election District No. 8 from "does not meet primary standards" to "cannot be classified." The State submitted documentation showing that the nonattainment monitor was being unduly influenced by local sources. The State also requested that specific areas in the Metropolitan Baltimore Intrastate AQCR and Maryland portion of the National Capital Interstate AQCR be designated as nonattainment areas for carbon monoxide (CO). Currently, the nonattainment areas for carbon monoxide in these AQCR's consist of unspecified "high traffic density" areas.

DATE: Comments on these proposed designation changes must be submitted on or before June 22, 1979.

ADDRESS: All comments should be forwarded to:

Mr. Howard Heim, Chief (3AH10), Air Programs Branch, U.S. Environmental Protection Agency, Region III, Curtis Building, Sixth & Walnut Streets, Philadelphia, Pennsylvania 19106.

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Mr. Harold A. Frankford, U.S. Environmental Protection Agency, Region III, Curtis Building, Sixth & Walnut Streets, Philadelphia, Pennsylvania 19106. Phone: (215/597–8392).

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978 (43 FR 8962), and September 12, 1978 (43 FR 40502), the Administrator of the Environmental Protection Agency published designations of attainment and nonattainment in the State of Maryland for the following air pollutants: Total suspended particulates (TSP), sulfur dioxide (SO_2), carbon monoxide (CO), ozone (O_3) and oxides of nitrogen (NO_x). These designations of attainment and nonattainment are required under Section 107(d) of the Clean Air Act as amended.

Proposed TSP redesignation

On August 31, 1978, the State of Maryland requested that EPA redesignate the Luke, Maryland Election District No. 8, currently considered as a nonattainment area for primary TSP standards, as "cannot be classified." The State based its request on the fact that the nonattainment monitor in this area, located at the Westernport Sewage Treatment Plant, has been influenced by localized activities, such as construction activities and mist produced by the sewage treatment plant's aeration processes.

EPA performed a review of the Westernport monitoring site and also concluded that the TSP violations recorded by this monitor could be attributed to undue localized influences. Therefore, EPA considers that a designation of "cannot be classified" for the Luke Election District No. 8 is appropriate. As such, EPA proposes that the Luke Election District No. 8 designation be changed from "does not meet primary TSP standards" to "cannot be classified."

Proposed CO Redesignations

On September 12, 1978 (43 FR 40502), the Administrator revised the nonattainment designations for the Metropolitan Baltimore Intrastate and the Maryland portion of the National Capital Interstate AQCR's with respect to carbon monoxide (CO). The revised designation limited the nonattainment areas to unspecified "high traffic density areas" rather than the entire area comprised by these AQCR's.

On September 25, 1978, the State of Maryland submitted specific boundaries of the nonattainment areas for CO in the Metropolitan Baltimore Intrastate AQCR and the Maryland portion of the National Capital AQCR. These areas, consisting of downtown Baltimore City, six census tracts in Prince Georges County and three census tracts in Montgomery County, represent areas of high traffic density. Such areas are most likely to show violations of the National Ambient Air Quality Standards for CO. Based on the information submitted by the State of Maryland, the Administrator proposes to designate census tracts 2, 6, 12, 16, 17, and 18 in Prince Georges County; census tracts 4, 7, and 13 in Montgomery County, and the entire Regional Planning District No. 118 in Baltimore City (generally corresponding to the Central Business District) as nonattainment areas for CO.

Submittal of Public Comments

The public is invited to comment on whether the Luke Election District No. 8 portion of the Cumberland-Keyser Interstate AQCR, currently a nonattainment area for primary TSP standards, should be redesignated as an "unclassified" area for TSP standards. Similarly, the public is invited to comment on whether those areas of the Metropolitan Baltimore Intrastate and Maryland portion of the National Capital Interstate AQCR's described in this notice of proposed rulemaking should be designated as nonattainment areas for CO under Section 107 of the Clean Air Act. All comments received on or before June 22, 1979 will be considered.

All comments should be addressed to: Mr. Howard Heim, Chief (3AH10), Air Programs Branch, U.S. Environmental Protection Agency, Region III, Curtis Building, Sixth & Walnut Streets, Philadelphia, Pennsylvania 19106, ATTN: 107 MD-1.

Authority: 42 U.S.C. 7407, 7601.

Dated: March 16, 1979.

A.R. Morris,
Acting Regional Administrator.

[FRL 1208-6]

[FR Doc. 79-12399 Filed 4-20-79; 8:45 am]
BILLING CODE 6560-01-M

[40 CFR Part 180]

Pesticide Programs; Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Proposed Tolerance for the Pesticide Chemical Malathion

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that a tolerance be established for residues of the insecticide malathion on almond shells at 50 parts per million. The proposal was submitted by the Interregional Research Project No. 4. This amendment to the regulations would establish a maximum permissible level for residues of malathion on almond shells.

DATE: Comments must be received on or before May 23, 1979.

ADDRESS COMMENTS TO: Mrs. Patricia Critchlow, Office of Pesticide Programs, Registration Division (TS-767), EPA, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mrs. Patricia Critchlow at the above address (202/755-4851).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, PO Box 231, Rutgers University, New Brunswick, NJ 08903, on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of California, has submitted a pesticide petition (PP 8E2114) to the EPA. This petition requests that the Administrator propose that 40 CFR 180.111 be amended by establishment of a tolerance for residues of the insecticide malathion (0,0-dimethyl dithiophosphate of diethyl mercaptosuccinate) in or on the raw agricultural commodity almond shells at 50 parts per million (ppm).

The data submitted in the petition and all other relevant material have been evaluated. The toxicology data considered in support of the proposed tolerance included two-year rat feeding studies, one with a no-observed-effect level (NOEL) of 100 ppm, the other showing cholinesterase inhibition at 100 ppm but no systemic effects at 1,000 ppm; a one-generation rat reproduction study in which reproductive effects were observed at 4,000 ppm, the only level tested; a negative neurotoxicity study; a negative single dose (900 milligrams (mg)/kilogram (kg) of body weight (bw)) intraperitoneal teratology study in rats; rat and mouse oral lethal dose (LD_{50}) tests; two negative mutagenicity tests using microbial assay systems; and a 47-day human feeding study with an NOEL at 0.2 mg/kg bw/day. Based on this last study and using a safety factor of 10, the acceptable daily intake (ADI) is 0.02 mg/kg bw/day. The maximum permissible intake (MPI) for a 60-kg human is 1.2 mg/day.

Tolerances have previously been established for residues of malathion on a variety of raw agricultural commodities at levels ranging from 135 ppm to 0.1 ppm. These tolerances include 50 ppm for residues of malathion in or on almond hulls. Food additive tolerances have also been established (21 CFR 193.260) for malathion residues on raisins at 12 ppm and in safflower oil at 0.6 ppm. Feed additive tolerances have been established (21 CFR 561.270) for malathion residues in dehydrated citrus pulp at 50 ppm and in nonmedicated cattle feed concentrate blocks at 10 ppm.

On a theoretical basis, the total maximal residue contribution (TMRC) of these tolerances exceeds the ADI. However, the Food and Drug Administration's total diet surveys show that over a four-year period the actual exposure to malathion was not more than 0.00013 mg/kg bw/day, which is less than 1 percent of the ADI. The increment of human exposure due to the tolerance on almond shells would be negligible, and thus, the increment in risk, if any, is acceptable. The metabolism of malathion is adequately understood and an adequate analytical method (gas chromatography using a flame photometric detector) is available for enforcement purposes.

The following studies are currently lacking: oncogenicity studies in two mammalian species using currently acceptable protocols, a multigeneration reproduction study, and teratology (oral) study. However, it has been determined that the proposed tolerance can be established because: (1) tolerances currently exist for malathion on a majority of food and feed items in the United States and (2) the use of malathion on almond shells will add little, if any, residue to the burden already present in milk and livestock from the presently registered uses. There are no pending actions against continued registration of malathion, nor are any other considerations involved in establishing the proposed tolerance.

The pesticide is considered useful for the purpose for which a tolerance is being sought, and it is concluded that the tolerance of 50 ppm on almond shells established by amending 40 CFR 180.111 will protect the public health. It is proposed therefore, that the tolerance be established as set forth below.

Any person who has registered or submitted an application for the registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act, which contains any of the ingredients listed herein, may request on or before May 23, 1979, that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition/document control number, "PP 8E2114/P108". All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in the office of the Emergency Response Section, Room 315, East Tower, from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: April 18, 1979.

Statutory Authority: Section 408(e) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(e)].

Douglas D. Campt,
Acting Director,
Registration Division

It is proposed that Part 180, Subpart C, § 180.111 be amended by alphabetically inserting almond shells at 50 ppm in the table to read as follows:

§ 180.111 Malathion; tolerances for residues.

* * * * *

Commodity:	*Parts per million*
* * * * *	
Almonds, shells	50
* * * * *	

[FRL 1209-1; PP8E2114/P108]
[FR Doc. 79-12539 Filed 4-20-79; 8:45 am]
BILLING CODE 6560-01-M

[40 CFR Part 180]

Pesticide Programs; Tolerances and Exemptions From Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities; Proposed Tolerance for the Pesticide Chemical Methomyl

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes that tolerances be established for residues of the insecticide methomyl on avocados and Chinese cabbage at 2 parts per million (ppm) and 5 ppm, respectively. The proposal was submitted by the Interregional Research Project No. 4. This amendment to the regulations would establish maximum permissible levels on avocados and Chinese cabbage.

DATE: Comments must be received on or before May 23, 1979.

ADDRESS COMMENTS TO: Mrs. Patricia Critchlow, Office of Pesticide Programs, Registration Division (TS-767), EPA, East Tower, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mrs. Patricia Critchlow at the above address (202/755-4851).

SUPPLEMENTARY INFORMATION: The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, PO Box 231, Rutgers University, New Brunswick, NJ 08903, has submitted two pesticide petitions (PP 8E2094 and 9E2135) to the EPA. PP 8E2094 submitted on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of California requests that the Administrator propose that 40 CFR 180.253 be amended by the establishment of a tolerance for residues of the insecticide methomyl (*S*-methyl *N*-[(methylcarbamoyl)oxy] thioacetimidate) in or on the raw agricultural commodity avocados at 2 ppm. PP 9E2135 submitted on behalf of the IR-4 Technical Committee and the Agricultural Experiment Station of Arizona requests that the Administrator propose that 40 CFR § 180.253 be amended by the establishment of a tolerance for residues of methomyl in or on the raw agricultural commodity Chinese cabbage at 5 ppm.

The data submitted in the petitions and all other relevant material have been evaluated. The toxicology data considered in support of the proposed tolerances were 2 two-year rat-feeding studies with no-observed-effect levels (NOEL) of 100 ppm; a two-year dog-feeding study with an NOEL of 100 ppm; a three-generation rat reproduction study with an NOEL of 100 ppm; and a hen neurotoxicity study negative at 28 milligrams (mg)/kilogram (kg) of body weight (bw). The acceptable daily intake (ADI) for methomyl is 0.025 mg/kg bw/day based on the two-year rat feeding study and using a 100-fold safety factor.

Desirable data that are lacking include an oncogenic study in a second mammalian species and mutagenicity assays. Mutagenicity assays are, however, generally deferred until Agency requirements are finalized. Completion date for the second oncogenicity study is 1980.

Both avocados and Chinese cabbage are considered minor crops and since the theoretical incremental increase in exposure is very small (less than 1 percent of the theoretical maximal residue contribution (TMRC), it is concluded that the present toxicity data are sufficient to determine that the proposed tolerances should be established. The maximum permissible intake (MPI) for methomyl residues has been calculated to be 1.5 mg/day/60-kg human. Tolerances have been set on a variety of raw agricultural commodities at levels ranging from 0.1 ppm to 10 ppm. The TMRC for existing tolerances for methomyl residues has been calculated to be 0.6 mg/day/1.5-kg daily diet or 0.8 mg/day/1.5-kg daily diet, unestablished as yet. No actions are pending against continued registration of the insecticide, nor are other considerations involved in establishing the proposed tolerances.

The nature of the residue is adequately understood and an adequate analytical method (gas chromatography using a microcoulometric sulfur detector) is available for enforcement purposes. There is no reasonable expectation of residues in eggs, meat, milk, or poultry since no feed items are involved in the proposed uses.

The pesticide is considered useful for the purpose for which tolerances are being sought, and it is concluded that the tolerances of 2 ppm on avocados and 5 ppm on Chinese cabbage established by amending 40 CFR § 180.253 will protect the public health. It is proposed, therefore, that the tolerances be established as set forth below.

Any person who has registered or submitted an application for the registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act, which contains any of the ingredients listed herein, may request on or before May 23, 1979 that this rulemaking proposal be referred to an advisory committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. The comments must bear a notation indicating both the subject and the petition/document control number, "PP 8E2094 & 9E2135/P111". All written comments filed in response to this notice of proposed rulemaking will be available for public inspection in Room 315, East Tower,

from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: April 18, 1979.

Statutory Authority: Section 408(e) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(e)].

Douglas D. Campt,
Acting Director, Registration Division.

It is proposed that Part 180, Subpart C, section 180.253 be amended by alphabetically inserting avocados at 2 ppm and Chinese cabbage at 5 ppm in the table and by revising the item "Vegetables, leafy * * *" as follows:

§ 180.253 Methomyl; tolerances for residues.

* * * * *

Commodity:	*Parts per million*
* * * * *	
Avocados	2
* * * * *	
Chinese cabbage	5
* * * * *	
Vegetables, leafy (exc. beets (tops), broccoli, brussels sprouts, cabbage, cauliflower, celery, Chinese cabbage, collards, dandelions; endive (escarole), Kale, lettuce, mustard greens, parsley; spinach, Swiss chard, turnip greens (tops), and watercress]	0.2 (N)
* * * * *	

[PP6E2094; 9E2135/P111; FRL1209-2]
[FR Doc. 79-12540 Filed 4-20-79; 8:45 am]
BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 149]

Eligibility of Foreign Medical Schools Under the Guaranteed Student Loan Progam

AGENCY: Office of Education, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commissioner of Education proposes procedures and criteria for the purpose of determining whether medical schools located outside the United States and Canada are eligible to apply for participation in the Guaranteed Student Loan Progam (GSLP). Participation in the GSLP by a foreign medical school means that its students who are citizens of the United States may apply for loans from eligible lenders under that program.

DATES: Comments must be received on or before June 22, 1979.

ADDRESSES: Written comments should be sent to Mr. John R. Proffitt, Director, Division of Eligibility and Agency Evaluation, Bureau of Higher and Continuing Education, U.S. Office of Education (Room 3030, ROB-3), 400 Maryland Ave., SW., Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mr. John R. Proffitt, Telephone 202-245-9873.

SUPPLEMENTARY INFORMATION:

Need for Regulations

An educational institution located outside of the United States is eligible to apply for participation in the Guaranteed Student Loan Program (GSLP) if it has been aproved by the Commissioner of Education as comparable to an institution of higher education or a vocational school in the United States. "Participation" in the GSLP by a foreign educational institution means that its students who are citizens or nationals of the United States may apply for loans from eligible lenders under that program.

In the past, the Commissioner's approval of foreign medical schools has been on an *ad hoc* basis because most of them enrolled very few American students. Recently, however, representatives of a number of foreign medical schools which enroll large numbers of American citizens have sought the Commissioner's approval on behalf of their institutions. There is reason to believe that a number of similar institutions may do so in the future. For this reason, the Commissioner believes it desirable to establish procedures and criteria by which foreign medical schools will be evaluated for purposes of determining their eligibility to apply for participation in the GSLP.

The GSLP regulations provide procedures and criteria by which foreign medical schools apply for participation.

Provisions of Regulations

The same nationally recognized accrediting agency which accredits medical schools located in the United States also accredits medical schools located in Canada. Accordingly, the Commissioner intends to use the same procedures and criteria for determining the eligibility of Canadian medical schools under the GSLP as are used for American medical schools.

With respect to foreign medical schools other than those in Canada, however, there exists no accrediting agency on whose opinion the Commissioner can rely for purposes of evaluation. No organization comparable to a nationally recognized accrediting agency makes site reviews of foreign medical schools and makes expert judgments as to the content, scope, and quality of the training offered. Nor does the Commissioner have the resources to undertake such reviews.

Under these circumstances, the Commissioner proposes to use an "output" evaluation for foreign medical schools (other than those in Canada). Specifically, the Commissioner will require that at least 95 percent of an institution's graduates who are citizens or nationals of the United States and who have taken the examination of the Educational Commission for Foreign Medical Graduates (ECFMG), Philadelphia, Pennsylvania, for the first time during the most recent 24-month period have passed that examination. (§ 149.84 (f) and (g)). The ECFMG examination was selected because it is a common and readily accessible examination by which a U.S. citizen foreign medical graduate may qualify for entry into graduate medical education in the United States. It is estimated that at least 95 percent of the graduates of any U.S. medical school taking the ECFMG examination for certification purposes would pass the examination on their first attempt. Therefore, a 95 percent ECFMG pass rate at foreign medical schools establishes a comparable likelihood that the graduates of those schools may successfully enter the United States medical health care delivery system as fully licensed physicians. This comparability test establishes a comparable likelihood that the GSLP loans will be repaid.

A foreign medical school which has not yet graduated two classes will be unable to qualify under the proposed criteria (§ 149.84(e)). The Commissioner believes that, in the absence of any other basis for determining whether such an institution is "comparable" to an American medical school, it is justifiable to withhold approval of the institution until the ECFMG test scores are available.

In addition, foreign medical schools will need to demonstrate that they meet a number of other basic requirements, such as being listed in the World Health Organization Directory and recognized by evaluative bodies in their own countries (§ 149.84 (a), (b), (c), (d), and (h)).

Once a foreign medical school is determined eligible to apply for participation in the GSLP, the Commissioner will not review its graduates' ECFMG examination scores again for two years. After two years another review of those scores will be required. An institution will lose its eligibility immediately if at any time it no longer meets the other criteria

(§ 149.85). In any case where a previously eligible foreign medical school loses its eligibility, those students who received loans under the GSLP while the school was eligible may continue to receive loans for the remainder of their enrollment at the school (§ 149.86).

Availability of Comments

Comments on these proposed regulations will be available for public inspection in Room 3030, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C. from 8:30 a.m. to 4 p.m., Monday through Friday (except Federal holidays).

Dated: April 2, 1979.

Ernest L. Boyer,
Commissioner of Education.

Approved: April 12, 1979.

Joseph A. Califano, Jr.,
Secretary of Health, Education, and Welfare.

(Catalog of Federal Domestic Assistance No. 13.460, Eligibility of Foreign Medical Schools Under the Guaranteed Student Loan Program)

1. Part 149 of Title 45 of the Code of Federal Regulations is amended by revising the title to read as follows:

PART 149—POSTSECONDARY EDUCATION—PROCEDURES FOR DETERMINING INSTITUTIONAL ELIGIBILITY AND FOR RECOGNIZING ACCREDITING BODIES AND CERTAIN STATE AGENCIES

2. Part 149 of Title 45 of the Code of Federal Regulations is amended by reserving subparts C and D and by adding a new subpart E, to read as follows;

Subpart E—Procedures and Criteria for Determining Institutional Eligibility of Foreign Medical Schools Under the Guaranteed Student Loan Program

Sec.

Authority: Sections 432 and 435(a) of the Higher Education Act of 1965, as amended (20 U.S.C. 1082, 1085(a)).

§ 149.81 Purpose and scope.

(a) An educational institution located outside of the United States is eligible to apply for participation in the Guaranteed Student Loan Program (GSLP) if it is comparable to an institution of higher education or a vocational school in the United States and has been approved by the Commissioner for purposes of the GSLP. This subpart sets forth procedures and criteria by which the Commissioner determines whether medical schools located outside the United States and Canada are eligible to apply for participation in the GSLP. "Participation" in the GSLP by a foreign medical school means that its students who are citizens or nationals of the United States may apply for loans from eligible lenders under that program.

(b) This subpart does not cover the procedures and criteria by which a foreign medical school determined eligible to apply for participation in the GSLP actually applies for such participation. Those procedures and criteria are set forth in the GSL regulations (45 CFR Part 177).

(c) With respect to medical schools located in Canada, the Commissioner uses the same procedures and criteria for determining eligibility as for medical schools located in the United States because the nationally recognized accrediting agency which accredits medical schools located in the United States also accredits medical schools located in Canada.

(20 U.S.C. 1082, 1085)

§ 149.82 Definitions.

For purposes of this subpart:

"Medical school" means an institution of higher education or a vocational shcool which provides an educational program for which it awards the degree of doctor of medicine.

"Foreign medical school" means a medical school not located in a State or in Canada.

"State" includes, in addition to the several States of the Union, the Commonwealth of Puerto Rico, the District of Columbia, Guam American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

"Institution of higher education" means an educational institution which meets the requirements of clauses (1), (3), and (4) of section 435(b) of the Higher Education Act of 1965 and is legally authorized within the country in which it is located to provide a program of education beyond secondary education.

"Vocational school" means a business or trade school, or technical institution or other technical or vocational school, which meets the requirements of clause (1) of section 435(c) of the Higher Education Act of 1965; is legally authorized to provide, and provides within the country in which it is located, a program of postsecondary vocational or technical education designed to fit individuals for useful employment in recognized occupations; and has been conducting classes in that country for at least two years.

"Guaranteed Student Loan Program (GSLP)" means the student loan program authorized by Title IV, Part B, of the Higher Education Act of 1965 (20 U.S.C. 1071, to 1087–4).

(20 U.S.C. 1082, 1085, 1141)

§ 149.83 Procedures for eligibility determination.

(a) The Commissioner may determine a medical school located outside the United States and Canada to be comparable to an institution of higher education or a vocational school and eligible to apply for participation in the GSLP upon the request of either:

(1) A person who is

(i) A citizen or national of the United States, and

(ii) Enrolled or accepted for enrollment at that institution, or

(2) The institution on behalf of eligible students in attendance.

(b) The Commissioner first determines whether the institution is an institution of higher education or a vocational school, as defined in § 149.82. This determination is made, however, only if all necessary information is provided to the Commissioner.

(c) If an affirmative determination is made under paragraph (b) of this section, the Commissioner then determines under the criteria in § 149.84 whether the institution is comparable to an institution of higher education or a vocational school in the United States for purposes of the GSLP.

(20 U.S.C. 1082, 1085)

§ 149.84 Criteria for determination of comparability.

The Commissioner determines that an institution is comparable to an institution of higher education or a vocational school in the United States for purposes of the GSLP only if the institution meets *all* of the following criteria.

(a) The institution is a medical school, as defined in § 149.82;

(b) The institution is listed as a medical school in the current directory of the World Health Organization, or in a current supplement to that directory;

(c) The institution is recognized as a medical school by those evaluating bodies in the country in which the institution is located, such as medical associations and educational agencies,

whose views are considered relevant by the Commissioner;

(d) The institution requires a period of instruction of not less than 32 months as a prerequisite for its degree of doctor of medicine;

(e) The institution has graduated classes during each of the two most recent twelve-month periods;

(f) One or more graduates of the institution are citizens or nationals of the United States who have taken the examination of the Educational Commission for Foreign Medical Graduates (ECFMG), Philadelphia, Pennsylvania, for the first time during the most recent 24-month period;

(g) Not less than 95 percent of the institution's graduates who are citizens or nationals of the United States and have taken the ECFMG examination for the first time during the most recent 24-month period have passed that examination; and

(h) The institution's graduates may legally be licensed to practice medicine in the country in which the institution is located.

(20 U.S.C. 1082, 1085)

§ 149.85 Duration of eligibility determination.

(a) A determination by the Commissioner that a foreign medical school is eligible to apply for participation in the GSLP is effective for no more than two years. The determination is not rescinded during the two-year period even if at any time during that period the institution no longer meets the criteria set forth in § 149.84 (f) and (g).

(b) However, if at any time an institution no longer meets the requirements for an institution of higher education or a vocational school or no longer meets the criteria set forth in § 149.84 (except paragraphs (f) and (g)), it loses its eligibility on the date it no longer meets those requirements. The Commissioner, in that case, informs the institution by mail that it is no longer eligible.

(20 U.S.C. 1082, 1085)

§ 149.86 Effect of determination that previously eligible school is no longer eligible.

Upon a determination by the Commissioner that a foreign medical school previously determined eligible to apply for participation in the GSLP is no longer eligible, only those students at the foreign medical school who actually received loans for a period during which the school was eligible may receive loans for attendance at that school during such time as the school remains ineligible. Those students may receive loans for the remainder of their enrollment at the school, provided the school remains a medical school, as defined in § 149.82.

(20 U.S.C. 1082, 1085)

[FR Doc. 79-12068 Filed 4-20-79; 8:45 am]

Notices

Federal Register
Vol. 44, No. 79
Monday, April 23, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

The NEPA Decision Process; Request for Comments

The Council on Environmental Quality (CEQ) has published regulations for implementing the procedural provisions of the National Environmental Policy Act of 1969, PL 91–190 (NEPA). The CEQ regulations (40 CFR parts 1500–1508; Federal Register November 29, 1978, pages 55978–56007) and proposed Department of Agriculture regulations soon to be published in draft form, have been integrated into proposed Forest Service procedures which will be issued as revised Forest Service Manual Chapter 1950. This manual revision will implement the CEQ and USDA regulations and provide direction that will make Forest Service compliance with the NEPA more efficient and effective in an integrated environmental analysis and decisionmaking process.

Comments should be submitted on or before May 20, 1979, to the Chief, Forest Service, P.O. Box 2417, Washington, DC 20013.

For further information, contact Ralph B. Solether, Acting Environmental Coordinator, USDA Forest Service, telephone 202–447–4708.

The proposed revision has been written to provide one policy document for use by Forest Service personnel. It incorporates appropriate CEQ regulations by direct quotation or citation and expands where necessary to further define Forest Service procedures.

This revision is generally organized the same as Forest Service Interim Directive No. 5, FSM 1950, issued May 26, 1978, which follows the sequence of the decision process. It provides the same outline for environmental assessments and environmental impact statements and focuses upon the total decisionmaking process rather than the environmental documents, to strengthen the integration of the NEPA and the decisionmaking process, it provides for filing the record of decision with the final environmental impact statement.

The Forest Service has also revised the NEPA Process Handbook (FSH 1909.15) which provides examples of how to do the jobs required by policy. This handbook is not being published here, but it is available for review in the Office of the Environmental Coordinator. The handbook contains a reprint of the CEQ regulations so that these will be available when necessary for all users of the handbook.

The revised manual incorporates all applicable laws, regulations and Executive Orders of the President. The latter are periodically referenced, and copies are available at the Office of the Chief or the Offices of the Regional Foresters throughout the country. Other referenced material such as the Inform and Involve Handbook, Secretary of Agriculture's memoranda and other sections of the Forest Service Manual are either available upon request or may be reviewed in the Office of the Environmental Coordinator. An index is provided at the end of this notice to assist reviewers who are unfamiliar with the Forest Service Manual format.

The proposed policy revision to the Forest Service Manual is set forth as follows.

Dated: April 13, 1979.

John R. McGuire,
Chief.

Title 1900—Planning

CHAPTER 1950—THE FOREST SERVICE NEPA PROCESS

Contents

"The National Environmental Policy Act (NEPA) is our basic national charter for protection of the environment. It establishes policy, sets goals (section 101), and provides means (section 102), for carrying out the policy. Section

102(2) contains 'action-forcing' provisions to make sure that Federal agencies act according to the letter and spirit of the Act...

"... it is not better documents, but better decisions that count. NEPA's purpose is not to generate paperwork—but to foster excellent action. The NEPA process is intended to help public officials make decisions that are based on understanding and enhance the environment." (40 CFR 1500.1) [1]

"(a) All policies and programs of the various USDA agencies shall be planned, developed and implemented so as to achieve the policies declared by NEPA in order to assure responsible stewardship of the environment for present and future generations." (7 CFR Subtitle A, Part 26.2) [1]

The Forest Service NEPA process includes all measures necessary for compliance with Section 2 and Title I of the National Environmental Policy Act of 1969 (P.L. 91–190 NEPA). The process recognizes that environmental analysis is an integral part of Forest Service planning and decisionmaking, and it is used to insure that decisions conform to other applicable laws under which the Forest Service operates.

This chapter constitutes Forest Service procedures for implementing the National Environmental Policy Act, Department of Agriculture and Council on Environmental Quality regulations. It incorporates as quotations those portions of the Council's Regulations of primary concern to the Forest Service.

1950.1 Authorities.—The Forest Service is authorized and directed by the NEPA to carry out its programs in ways that will create and maintain conditions under which man and nature can exist in productive harmony, and fulfill social and economic needs of present and future generations of Americans.

Several laws require a systematic interdisciplinary approach to planning and decisionmaking. These include the National Environmental Policy Act, Forest and Rangeland Renewable Resources Planning Act, as amended and the National Forest Management Act. The NEPA also requires detailed statements on proposed major Federal actions significantly affecting the quality of the human environment (Section 102(2)(C)).

1950.2 Objectives.—The objectives of the Forest Service NEPA Process with its accompanying documents are to:

1. Integrate the requirements of NEPA with other planning and decisionmaking procedures required by law or by Forest Service practice so that all such procedures run concurrently rather than consecutively.

2. Provide careful and appropriate consideration of physical, biological, social and economic concerns in planning and decisonmaking.

3. Provide for early and continuing participation of other agencies, organizations, and individuals having appropriate responsibilities, expertise, or interest.

4. Determine if there is a need for an Environmental Impact Statement.

5. Assure that planning and decisonmaking is open and available for public review.

6. Emphasize decisionmaking rather than the environmental documents.

7. "... make the NEPA process more useful to decisionmakers and the public; to reduce paperwork and the accumulation of extraneous background data; and to emphasize real environmental issues and alternatives. ..." (40 CFR 1500.2(b)).

8. "Use the NEPA process to identify and assess the reasonable alternatives to proposed actions that will avoid or minimize adverse effects of these actions upon the quality of the human environment." (40 CFR 1500.2(e)).

9. "Use all practicable means, consistent with the requirements of the Act and other essential considerations of national policy, to restore and enhance the quality of the human environment and avoid or minimize any possible adverse effects of their actions upon the quality of the human environment." (CFR 1500.2(f)).

10. Identify a preferred alternative when considering alternative policies, plans, programs, or projects.

11. Document the rationale of the decisionmaker.

12. Provide a basis for determining management requirements, mitigation measures, and contract provisions or stipulations.

1950.3 Policies.

(1) An environmental analysis will be made for all decisions about actions and policy changes affecting resources, other land uses, or the quality of the physical, biological, economic, and social environment.

(2) The environmental analysis is the decision process used to determine the significance of effects. This in turn, determines which and when environmental documents are appropriate.

Analyses are documented in either an Environmental Assessment (EA) including a Finding of No Significant Impact, or an Environmental Impact Statement (EIS) (See FSM 1952). The length and detail of analyses and the degree of documentation varies according to the type of decisions being made and is determined by the official responsible for the decision(s). This determination is made through consideration of the importance of the effects of the decision(s) (FSM 1951.7). Documents must present a logical explanation of the need for the action; the criteria for evaluating alternatives; the alternatives considered; the anticipated effects of implementing the alternatives; and, in most cases, the Forest Service preferred alternative.

(3) Environmental documents such as EA's, EIS's, Notices of Intent, and Findings of No Significant Impact should replace, and not duplicate, other reports previously used to serve similar purposes. This is intended, among other things, to reduce paperwork and delay.

(4) Analyses must be conducted as early as possible and be used for decisions and recommendations. EA's and EIS's document the analysis, and identify the line officer responsible for the decision. Environmental Assessments or Impact Statements are not required for those classes of actions identified as "categorical exclusions" (FSM 1952.1).

(5) Responsible officials shall "encourage and facilitate public involvement in decisions which affect the quality of the human environment" (40 CFR 1500.2(d)). Agencies, organizations, and individuals having responsibilities, expertise, or expressed interest shall be consulted as appropriate at the beginning of the analysis activity. The A–95 project notification process shall be used, when appropriate, to notify State and local agencies. Consultations must be documented.

(6) Analysis will impartially consider reasonable alternatives and the aniticpated effects associated with each alternative.

(7) "Environmental Assessments and Environmental Impact Statements shall be prepared using an interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts." (section 102(2)(a) of the NEPA). "The disciplines of the preparers shall be appropriate to the scope and issues identified in the scoping process." (40 CFR 1502.6). (8) Costs of environmental analyses and documents for *in-service* originated programs are a part of the regular budgetary process for the plan, program or project. Costs will be borne by the *benefitting activity(ies)* unless special provision is made at the

[1] See Section 520, FSH 1909.15, the NEPA Process Handbook for the Council's Regulations 40 CFR 1500–1508.28. See Section 540 for U.S. Department of Agriculture Regulations 7 CFR Subtitle A, Part 26.

Washington Office level. For *out-service* originated activities, see FSM 1950.4.

(9) Responsible officials "shall not commit resources prejudicing selection of alternatives before making a final decision." (40 CFR 1502.2(f)). This applies both to actions for which an EA or EIS is required.

(10) Any plan, program, or project located in or that may affect flood plains or wetlands must be responsive to E.O. 11988 and 11990 (See FSM 2527 and 2528).

(11) The Chief, Regional Foresters, Area and Station Directors shall designate a person in their office to serve as Environmental Coordinator who shall insure that information on status of EIS's and other elements of the NEPA process is provided.

(12) Responsible officials shall insure that environmental analyses and Environmental Impact Statements are conducted and prepared "concurrently with an integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. Sec. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. Sec. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 et seq.), and other environmental review laws and executive orders." (40 CFR 1502.25).

(13) Information about Forest Service policies, including the NEPA process requirements, shall be provided upon request, to agencies, organizations and individuals so that they are aware of studies and information that may be required before Forest Service action on their application.

1950.4 Responsibilities.—The Chief is responsible for environmental analysis and documentation relating to legislation and selected national policies, plans, programs, and projects including but not limited to plans programs, or projects affecting areas involved in pending legislation for wilderness designation or study. The Forest Service Environmental Coordinator shall be responsible for overall review of FS NEPA compliance.

The Regional Forester, Area Director, Station Director, Forest Supervisor, District Ranger and Research Program Managers and Project Leaders are responsible for determining the need for environmental analyses, making the identifications shown in FSM 1951.2, preparation of environmental documents, and making decisions within their areas of responsiblity and subject to FSM 1952.

Delegations of authority are specified in Forest Service Manual 1230. Officials delegated responsiblity for proposed actions are responsible for environmental analyses (Also see FSM 1952.54a).

Project proponents may be required to provide data and documentation, subject to the following requirements:

(a)Information. If any agency requires an applicant to submit environmental information for possible use by the agency in preparing an Environmental Impact Statement, then the agency should assist the applicant by outlining the types of information required. The agency shall independently evaluate the information submitted and shall be responsible for its accuracy. If the agency chooses to use the information submitted by the applicant in the Environmental Impact Statement, either directly or by reference, then the names of the persons responsible for the independent evaluation shall be included in the list of preparers (Sec. 1502.17). It is the intent of this subparagraph that acceptable work not be redone, but that it be verified by the agency.

(b) Environmental Assessments. If an agency permits an applicant to prepare an Environmental Assessment, the agency, besides fulfilling the requirements of paragraph (a) of this section, shall make its own evaluation of the environmental issues and take responsibility for the scope and content of the Environmental Assessment.

"(c) Environmental Impact Statements. Except as provided in 40 CFR 1506.2 and 1506.3, any Environmental Impact Statement prepared pursuant to the requirements of NEPA shall be prepared either directly, by a contractor selected by the lead agency or, where appropriate under Sec. 1501.6(b) by a cooperating agency. It is the intent of these regulations that the contractor be chosen solely by the lead agency, or by the lead agency in cooperation with cooperating agencies, or where appropriate, by a cooperating agency to avoid any conflict of interest. Contractors shall execute a disclosure statement prepared by the lead agency, or where appropriate, the cooperating agency, specifying that they have no financial or other interest in the outcome of the project. If the document is prepared by contract, the responsible Federal official shall furnish guidance and participate in the preparation and shall independently evaluate the statement prior to its approval and take responsibility for its scope and contents. Nothing in this section is intended to prohibit any agency from requesting any person to submit information to it or to prohibit any person from submitting information to any agency." (40 CFR 1506.5).

When an applicant is permitted to prepare an Environmental Assessment, or a contractor is employed to prepare an Environmental Impact Statement, their activities shall be limited to those shown as the usual roles of the interdisciplinary team. (See FSM 1951). Applicants or contractors must comply with requirements of FSM 1950.

1950.41 Lead Agency.—"A lead agency shall supervise the preparation of an Environmental Impact Statement if more than one Federal agency either:

(1) Proposes or is involved in the same action; or

(2) Is involved in a group of actions directly related to each other because of their functional interdependence or geographical proximity.

"(b) Federal, State, or local agencies, including at least one Federal agency, may act as joint lead agencies to prepare an Environmental Impact Statement. . . .

"(c) . . . the potential lead agencies shall determine by letter or memorandum which agency shall be the lead agency and which shall be cooperating agencies. The agencies shall resolve the lead agency question so as not to cause delay. If there is disagreement among the agencies, the following factors (which are listed in order of descending importance) shall determine lead agency designation:

(1) Magnitude of agency's involvement.

(2) Project approval/disapproval authority.

(3) Expertise concerning the action's environmental effects.

(4) Duration of agency's involvement.

(5) Sequence of agency's involvement.

"(d) Any Federal agency, or any State or local agency or private person substantially affected by the absence of lead agency designation may make a written request to the potential lead agencies that a lead agency be designated.

"(e) If Federal agencies are unable to agree on which agency will be the lead agency . . . any of the agencies or persons concerned may file a request with the Council asking it to determine which Federal agency shall be the lead agency.

"A copy of the request shall be transmitted to each potential lead agency. The request shall consist of:

(1) A precise description of the nature and extent of the proposed action.

(2) A detailed statement of why each potential lead agency should or should not be the lead agency under the criteria specified above . . .

"(f) A response may be filed by a potential lead agency concerned within 20 days after a request is filed with the Council. The Council shall determine as soon as possible but not later than 20 days after receiving the request and all responses to it which Federal agency shall be the lead agency and which other Federal agencies shall be cooperating agencies." (40 CFR 1501.5).

A Forest Service request that the Council determine which Federal Agency shall be the lead agency shall be sent to the Forest Service Environmental Coordinator in Washington, DC, for processing.

Where National Forest System lands are involved, the Forest Service should exert a strong role in environmental analyses.

1950.42 Cooperating Agencies.—". . . Upon request of the lead agency, any other Federal agency which has jurisdiction by law shall be a cooperating agency. In addition, any other Federal agency which has special expertise with respect to any environmental issue, which should be addressed in the statement may be a cooperating agency upon request of the lead agency. An agency may request the lead agency to designate it a cooperating agency.

"(a) The lead agency shall:

(1) Request the participation of each cooperating agency in the NEPA process at the earliest possible time.

(2) Use the environmental analysis and proposals of cooperating agencies with jurisdiction by law or apecial expertise, to the maximum extent possible consistent with its responsibility as lead agency.

(3) Meet with a cooperating agency at the latter's request.

"(b) Each cooperating agency shall:

(1) Participate in the NEPA process at the earliest possible time.

(2) Participate in the scoping process.

(3) Assume on request of the lead agency responsibility for developing information and preparing Environmental Impact Statement concerning which the cooperating agency has special expertise.

(4) Make available staff support at the lead agency's request to enhance the latter's interdisiplinary capability.

(5) Normally use its own funds. The lead agency shall, to the extent available funds permit, fund those major activities or analyses it requests from cooperating agencies. Potential lead agencies shall inclue such funding requirements in their budget requests.

"(c) A cooperating agency may in response to a lead agency's request for assistance in preparing the Environmental Impact Statement. . . . reply that other program commitments preclude any involvement or reply that other program commitments preclude any involvement or the degree of involvement requested in the action that is the subject of the Environmental Impact Statement. A copy of this reply shall be submitted to the Council." (40 CFR 1501.6).

When National Forest Systems lands are involved, and the Forest Service is not the lead agency, the Regional Forester shall request that the Forest Service be a cooperating agency.

If the Forest Service is requested to be a cooperating agency and other program commitments preclude the requested involvement, a reply to this effect shall be prepared by the Regional Forester, Area or Station Director. A copy of the reply must be sent to the Forest Service Environmental Coordinator in Washington, D.C., within 10 working days of the date that the letter is transmitted.

1950.5 Definitions.—In addition tc the definitions in this section, also see FSM 1905—Definitions and Section 1508 of the Council's Regulations in Section 520 of FSH 1909.15, the NEPA Process Handbook.

Decision Notice: The Decision Notice clearly portrays the decision reached through the process documented in the EA. It also establishes the date of the responsible official's decision.

Environment: The aggregate of physical, biological, economic, and social factors affecting organisms in an area. (See also human environmental). (40 CFR 1508.14).

Environmental Analysis: All activities related to assessing or analyzing alternatives and their environmental effects.

Environmental Assessment: ". . . a concise public document. . . ." which documents the environmental analysis. (40 CFR 1508.9).

Environmental Design Arts: Those disciplines such as architecture, civil and environmental engineering, and landscape architecture which directly influence the physical environment as a result of the design of projects of all kinds.

Evaluation Criteria: Predetermined rules for appraising alternatives.

Flood Plains: Lowland and relatively flat areas adjoining inland and coastal water including as a minimum, that area subject to a one percent or greater chance of flooding in any given year. Floodprone wetlands and sinkholes, and sheet flow or shallow flooding areas such as debris cones or alluvial fans built up by material carried by mountain streams, are special flood plain areas.

Implementation: Those activities necessary to *respond* to the decision.

Interdisciplinary Approach: The utilization of individuals representing two or more areas of knowledge and skills focusing on the same subject. The participants develop solutions through frequent interaction so that each disciplines may provide insights to any state of the problems, and disciplines may combine to provide new solutions. This is different from a multidisciplinary team where each specialist is assigned a portion of the problem and their partial solutions are linked together at the end to provide the final solution.

Irreversible: Applies primarily to the use of nonrenewable resources, such as minerals or to those factors which are renewable only over long time spans, such as soil productivity. "Irreversible" also includes loss of future options.

Irretrievable: Applies to losses of production, harvest or use of renewable natural resources. For example, some or all of the timber production from an area is irretrievably lost while an area is used as a winter sports site. If the use is changed, timber production can be resumed. The production lost is "irretrievable," but the action is not irreversible.

Issue: A point, matter, or question to be resolved.

Wetlands: Areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction.

Responsible Official: The Forest Service line officer who has been delegated the authority to approve, or adopt, policies, plans, programs, or projects.

1950.6 Limitations On Actions After It Has Been Determined That An Environmental Impact Statement Will Be Prepared.

"(a) Until an agency issues a Record of Decision (except as provided in paragraph (c) of this section), no action concerning the proposal shall be taken which would:

(1) Have an adverse environmental impact; or

(2) Limit the choice of reasonable alternatives.

"(b) If any agency is considering an application from a non-Federal entity, and is aware that the applicant is about to take an action within the agency's jurisdiction that would meet either of the criteria in *paragraph (a) of this section,* then the agency shall promptly notify the applicant that the agency will take appropriate action to insure that the objectives and procedures of NEPA are achieved.

"(c) while work on a required program Environmental Impact Statement is in progress and the action is not covered by an existing program statement, agencies shall not undertake in the interim any major Federal action covered by the program which may significantly affect the quality of the human environment unless such action:

(1) Is justified independently of the program;

(2) Is itself accompanied by an adequate Environmental Impact Statement; and

(3) Will not prejudice the ultimate decision on the program. Interim action prejudices the ultimate decision on the program when it tends to determine subsequent development or limit alternatives.

"(d) This section does not preclude development by applicants of plans or designs or performance of other work necessary to support an application for Federal, State or local permits or assistance. . . ." (40 CFR 1506.1).

1950.7 Elimination of Duplication with State and Local Procedures.—In order to reduce duplication of Forest Service NEPA activities and those required by State and local governments, responsible officials shall initiate contacts with appropriate State and local officials to determine if cooperative analyses and documentation is desirable. Contacts may include State and local clearinghouses, individual State and local agencies, councils of government, and local government officials. (40 CFR 1506.2).

1951 Environmental Analysis (See FSM 1950.3 No. 1). An analysis must be conducted systematically to help insure that required information is considered in a logical manner which generally leads to identification of a preferred alternative. The analysis may be carried out in separate, but interrelated steps. The process is iterative with information feeding back through earlier steps which may be combined or expanded depending on the situation.

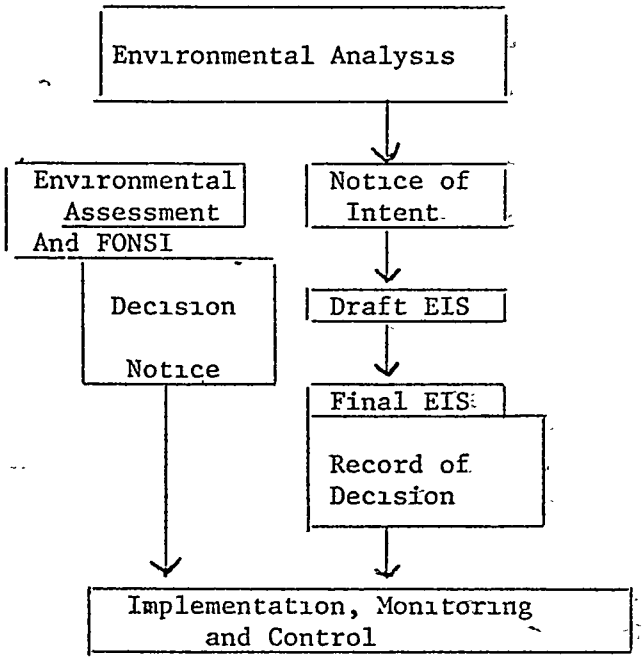
A systematic, interdisciplinary approach is required. Team member interaction provides necessary insights in all steps of the process. The disciplines involved in an analysis "shall be appropriate to the scope and the issues identified in the scoping process." (40 CFR 1502.6). In each analysis, use should be made of earlier documented analysis information to avoid duplication of previous effort and to maximize use of available information.

"Whenever a broad Environmental Impact Statement (or Environmental Assessment) has been prepared (such as a program or policy statement) and a subsequent statement or Environmental Assessment is then prepared on an action included within the entire program or policy (such as a site-specific action) the subsequent statement or Environment Assessment need only summarize the issue discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issue specific to the subsequent action. The subsequent document shall state where the earlier document is available . . ." (40 CFR 1502.20(f)).

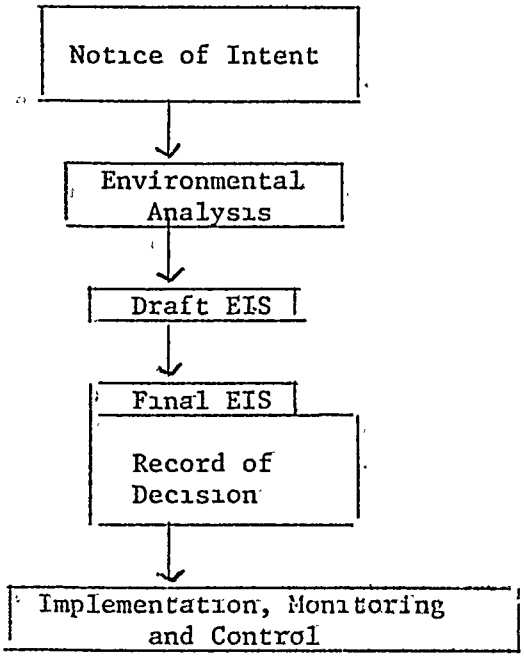
Normally, environmental analyses are completed and documented in an EA or EIS. If the need to complete the analysis and/or documentation is eliminated (i.e., the project application is withdrawn, or for other reasons) the analysis and/or documentation should be terminated and the interested parties informed.

1951 10-Relationships.--The relationships between the environmental analysis, the environmental documents and implementation are shown in diagrams below

When the need for an EIS has not been determined



When the need for an EIS has been determined (FSM 1952.22)



The usual roles of participants in the major steps of the NEPA process are shown in the following chart.

Usual Role of Participants

The NEPA process	The responsible official (see FSM 1950.4) (use definition)	Interdisciplinary team	Agencies, organizations, and individuals
1. *Environmental analysis and decision process:			
A. Identify issues, concerns, and opportunities	Responsible	Recommend	Recommend.
B. Development of criteria	Responsible	Recommend	Recommend.
C. Data and information collection	Review	Responsible	Provide information.
D. Situation assessment	Review	Responsible	Provide information.
E. Formulate alternatives	Responsible	Assist	Recommend.
F Estimate effects	Review	Responsible	Provide information.
G. Evaluate alternatives	Responsible	Assist	Provide information.
H. Identify the FS preferred alternative	Responsible	Recommend	Recommend.
2. Documentation	Review	Responsible	Review.
3. Establish decision date	Responsible	Recommend	Review.
4. Implementation, monitoring and control	Responsible	Assist	Assist.

*Public involvement is an integral part of the process.

1951.1 Public Involvement.—Public involvement is an integral part of the Forest Service NEPA Process. Public participation may be involved in each step of the analysis. See FSM 1626 and Inform and Involve Handbook and Secretary of Agriculture Memo No. 1695, Supp. No. 5. See Section 111, of FSH 1909.15, the NEPA Process Handbook for a list of agencies with legal jurisdiction or expertise.

Responsible officials shall:

"(a) Make diligent efforts to involve the public in implementing the Forest Service NEPA procedures; and

"(b) Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.

(1) In all cases the agency shall mail notice to those who have requested it on an individual action.

(2) In the case of an action with effects of national concern, notice shall include publication in the Federal Register and notice by mail to national organizations reasonably expected to be interested in the matter and may include listing in the 102 Monitor.

(3) In the case of an action with effects primarily of local concern the notice may include:

(i) Notice to State and areawide clearinghouses pursuant to OMB Circular A-95 (Revised).

(ii) Notice to Indian tribes when effects may occur on reservations.

(iii) Following the affected State's public notice procedures for comparable actions.

(iv) Publication in local newspapers (in papers of general circulation rather than legal papers).

(v) Notice through other local media.

(vi) Notice to potentially interested community organizations including small business associations.

(vii) Publication in newsletters that may be expected to reach potentially interested persons.

(viii) Direct mailing to owners and occupants of nearby or affected property.

(ix) Posting of notice on-and off-site in the area where the action is to be located.

"(c) Hold or sponsor public hearings or public meetings whenever appropriate or in accordance with statutory requirements applicable to the agency. Criteria shall include whether there is:

(1) Substantial environmental controversy concerning the proposed action or substantial interest in holding the hearing.

(2) A request for a hearing by another agency with jurisdiction over the action supported by reasons why a hearing will be helpful. If a draft Environmental Impact Statement is to be considered at a public hearing, the agency should make the statement available to the public at least 15 days in advance (unless the purpose of the hearing is to provide information for the draft environmental Impact Statement).

"(d) Solicit appropriate information from the public.

"(e) Explain . . . where interested persons can get information or status reports on Environmental Impact Statements and other elements of the NEPA process.

"(f) Make Environmental Impact Statements, the comments received and any underlying documents available to the public pursuant to the provisions of the Freedom of Information Act (5 U.S.C. 552), without regard to the exclusion for interagency memoranda where such memoranda transmit comments of Federal agencies on the environmental impact of the proposed action. Materials to be made available to the public shall be provided to the public without charge to the extent practicable, or at a fee which is not more than the actual cost of reproducing copies required to be sent to other Federal agencies, including the Council." (40 CFR 1506.6).

The composite list of Environmental Impact Statements under Preparation (FSM 1952.23) identifies the person to contact for further information about environmental impact statements. Information about other environmental analyses and their documentation shall be furnished to the public by designated Environmental Coordinators in the Washington Office, Regional Offices, Forest Supervisor's Offices, Research Stations and S&PF Area Offices when requested. Other personnel may make documents available as appropriate.

Where flood plains or wetlands are involved, there must be sufficient public participation to satisfy the requirements for early public review as shown in Section 2.A(4) of E.O. 11988, and Section 2(B) of E.O. 11990. (See FSM 2527 and 2528).

1951.2 Identify Issues, Concerns, and Opportunities.—(Scoping). The environmental analysis begins by identifying the major issues, concerns, or opportunities and the need for a decision.

"There shall be an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to a proposed action. This process shall be termed scoping. . . ." (40 CFR 1501.7)

See section 141 of FSH 1909.15, the NEPA Process Handbook, for a list of environmental factors that might be involved.

When the action is such that an Environmental Impact Statement is required (FSM 1952.22a), or is highly probable, the responsible official shall:

". . . (1) Invite the participation of affected Federal, State, and local agencies, any affected Indian tribe, the proponent of the action, and other interested persons (including those who might not be in accord with the action on environmental grounds).

"(2) Determine the scope and the significant issues to be analyzed in depth in the Environmental Impact Statement.

"(3) Identify and eliminate from detailed study the issues which are not significant or which have been covered by prior environmental review, narrowing the discussion of these issues in the statement to a brief presentation of why they will not have a significant effect on the human environment or

providing a reference to their coverage elsewhere.

"(4) Allocate assignments for preparation of the Environmental Impact Statement among the lead and cooperating agencies with the lead agency retaining responsibility for the statement.

"(5) Indicate any public environmental assessments and other environmental impact statements which are being or will be prepared that are related to but are not part of the scope of the impact statement under consideration.

"(6) Identify other environmental review and consultation requirements so the lead and cooperating agencies may prepare other required analyses and studies concurrently with, and integrated with, the Environmental Impact Statement.

"(7) Indicate the relationship between the timing of the preparation of environmental analyses and the agency's tentative planning and decisionmaking schedule. . . ." (40 CFR 1501.7).

During the public involvement the responsible official may set time limits on environmental analyses and page limits on environmental documents. (40 CFR 1501.8).

The scoping process described above is not mandatory for the preparation of a legislative Environmental Impact Statement. (See 1952.22a).

1951.3 Development of Criteria.—Criteria or standards must be agreed upon early in the analysis process, as they guide subsequent steps of the process. As used here, standards and criteria do not refer to the policy type of standards, criteria and guidelines discussed in section 14 of RPA, as amended (Sec. 11 of NFMA).

The major issues and concerns to be addressed in detail during the analysis determine the criteria for the subsequent steps in the analysis.

Criteria are frequently needed in regard to the following items:

(1) Information collection standards such as: the kind, amount intensity, and accuracy desired.

(2) Alternative formulation standards such as the kinds of alternatives the responsible official considers to be included in the reasonable range of alternatives and monitoring requirements.

(3) Analysis standards such as: Time periods to be covered by the analysis, techniques to be used. Discount rates to be applied.

(4) Evaluation standards such as: Goals of management, program objectives, and tests of feasibility that will be used to compare alternatives.

(5) Documentation standards such as those that will be used in the writing and processing of the EA or EIS.

(6) Guidelines for selecting interdisciplinary team members.

1951.31 Evaluation Criteria.—Whereas most of the kinds of criteria listed above are used by the interdisciplinary team in the conduct of their responsibilities, evaluation criteria are used by the responsible official and the team in evaluating the alternatives and identifying preferred alternatives. Evaluation criteria should be developed from sources external to the analysis. Otherwise, decisions may appear to be made on evaluation criteria which are selected to justify the selection of the preferred alternative.

Evaluation criteria are frequently developed from:

(1) Laws, Executive Orders, regulations and judicial direction. (Specifically including items in Section 101(b) of the NEPA).

(2) Goals and objectives from higher-order Forest Service plans and policy statements.

(3) Program objectives.

(4) Test of legal, technical, financial, economic, and political feasibility.

(5) Public and other agency recommendations.

Sources of evaluation criteria should be documented.

Evaluation criteria established early in the analysis are subject to revision as the analysis proceeds. Early identification of evaluation criteria assists in formulation of alternatives and estimation of implementation effects. It also provides an opportunity for others to comment, suggest modifications, and recommend criteria that might have been omitted.

Evaluation criteria should not restrict alternative formulation by prematurely ruling out reasonable alternatives. However, they should help eliminate development of infeasible alternatives.

1951.4—Data and Information Collection.—After the issues, concerns, and opportunities are identified, appropriate data and information must be collected. The type and amount of data and information depends on the situation, the issues, concerns, opportunities and the scope of anticipated effects. Data collection should focus on the present and expected future conditions of those physical, biological, economic and social factors affecting and affected by the decision. Sources of information should be documented.

1951.5—Situation Assessment.—Situation analysis is a means of translating collected data and information into an understanding of the current and expected future conditions related to the issues and concerns. The expected future conditions should be estimated on the basis of continuation of current Forest Service management direction. Assumptions and other methods used in the analysis should be recorded for subsequent use in the EA or EIS.

1951.6—Formulative Alternatives.—A reasonable range of alternatives is developed to provide different ways to address major issues, concerns, and opportunities. These are developed consistent with goals and objectives from legislation or higher-order FS plans, programs, and policies.

The arange of alternatives must be broad enough to respond to major issues, concerns and opportunities. All reasonable alternatives must be considered in the process of developing the reasonable range. See supplementary information for the Council's NEPA Regulations, specifically the comments on Sec. 1502.14 for a discussion relating to explanation of "reasonable." (See Federal Register, November 29, 1978). Alternatives should be fully and impartially developed.

Care should be taken to insure that the range of alternatives does not prematurely foreclose options which might enhence environmental quality or have fewer detrimental effects. The alternative of taking no action (continuing the present course of action or "no change") must always be included. Public involvement is important in formulating alternatives. The extent of involvement depends on the issues, concerns, opportunities involved, and the kind and magnitude of the decision. Alternatives are often modified and new alternatives developed as the analysis proceeds.

Alternatives should be formulated to include management requirements and mitigation measures and monitoring needed to avoid adverse environmental effects and conform to all other applicable laws relating to Forest Service activities. In the development of mitigation measures, it may be desirable to contact other Federal, State, or local agencies regarding specific environmental values.

If the plan, program, or project is located in, or may affect, flood plains or wetlands, alternatives must be responsive to E.O. 11988 and 11990. See FSM 2527 and 2528.

1951.7—Estimate Effects.—The appropriate effects of implementing each alternatives must be estimated. Direct, indirect, and cumulative effects should all be considered. Effects are

expressed in terms of future outputs, expenditures, costs, and changes in the physical, biological, economic, and social components of the environment for each alternative. The changes should be those associated with implementation of the alternative, and expressed, when possible, in terms of differences from the expected future condition associated with the "no action" alternative. Changes are usually described in terms of their magnitude, duration, and significance. See Section 141 of FSH 1909.15, The NEPA Process Handbook, for a list of environmental factors which may change as a result of implementation of the various alternatives. It is not always necessary to deal with all factors and components of the environment. The effects considered in analysis should be only those of significance to the issues, concerns, opportunities, and the evaluation criteria.

Unquantified environmental amenities and values must be given appropriate consideration.

If indicators of economic efficiency are appropriate to the issues or concerns, they are developed in this step. When this is done, the relationship of economic efficiency and any analysis of unquantified environmental impacts, values, and amenities should be identified.

Although separate analysis is not necessary, the following effects must be considered for all alternatives:

1. ". . . the relationship between local, short-term uses of man's environment and maintenance and enhancement of long-term productivity . . .

2. ". . . any adverse environmental effects which cannot be avoided . . .

3. ". . . any irreversible or irretrievable commitments of resources . . ." (40 CFR 1502.16).

4. Effects upon minority groups and civil rights. (Secretary's memorandum 1662, Supplement 8 and OMB Circular A–19). (See also FSM 1730).

5. Effects upon prime farmland, range, and forest lands.

6. Effects upon wetlands and flood plains.

7. "(a) Direct effects and their significance. . . . "(b) Indirect effects and their significance. . . .

"(c) Possible conflicts between the proposed action and the objectives of Federal, Regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned. . .

"(e) Energy requirements and conservation potential of various alternatives and mitigation measures.

"(f) Natural or depletable resource requirements and conservation potential of various alternatives and mitigation measures.

"(g) Urban quality, historic and cultural resources, and the design of the built environment, including the re-use and conservation potential of various alternatives and mitigation measures. . .

1951.8-Evaluate Alternatives.—Alternatives are evaluated by comparing current and future outputs, costs and physical, biological, economic, and social changes for each alternatives with evaluation criteria. This evaluation provides a basis for identifiying the Forest Service preferred alternative.

The evaluation should identify possible conflicts between alternatives ". . .and the objectives of Federal, regional, State, and local (and in the case of a reservation, Indian tribe) land use plans, policies and controls for the area concerned." (40 CFR 1502.16(c)).

If the need for an EIS has not been determined, the evaluation also includes determining if an EIS should be prepared. When the need for an EIS has not already been established (FSM 1952.22), the significance of effects should be considered in terms of context and intensity in evaluating the need for an EIS:

". . .Contest. . .means that the significance of an action must be analyzed in several contexts such as society as a whole (human, national), the affected region, the affected interests, and the locality. Significant varies with the setting of the proposed action. For instance, in the case of a site-specific action, significance would usually depend upon the effects in the locale rather than in the world as a whole. Both short-and long-term effects are relevant.

"Intensity. . .refers to the severity of impact. Responsible officials must bear in mind that more than one agency may make decisions about partial aspects of a major action. The following should be considered in evaluating intensity:

(1) Impacts that may be both beneficial and adverse. A significant effect exist even if the Federal agency believes that on balance the effect will be beneficial.

(2) The degree to which the proposed action affects public health or safety.

(3) Unique characteristics of the geographic area such as proximity to historic or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas.

(4) The degree to which the effects on the quality of the human environment are likely to be highly controversial.

(5) The degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks.

(6) The degree to which the action may establish a precedent for future actions with significant effects or represents a decision in principle about a future consideration.

(7) Whether the action is related to other actions with individually insignificant but cumulatively significant impacts. Significance exists if it is reasonable to anticipate a cumulatively significant impact on the environment. Significance cannot be avoided by terming an action temporary or by breaking it down into small component parts.

(8) The degree to which the action may adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or may cause loss or destruction of significant scientific, cultural, or historical resources.

(9) The degree to which the action may adverely affect an endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973.

(10) Whether the action threatens a viloation of Federal, State, or local law or requirements imposed for the protection of the environment." (40 CFR 1508.27).

1951.9—identification Of The Forest Service Preferred Alternatives.—Based on evaluation of the alternatives, the responsible official identifies a preferred alternative. The rationale used in identification of the preferred alternative must be documented. In some situations, it may not be desirable to identify a preferred alternative until the draft EIS has been circulated. In these situations, the action of identifying the preferred alternative is not taken. The Chief's approval to prepare a draft EIS that does not identify a preferred alternative must be obtained before it is determined not to take this this action in the analysis.

1952–Documentation.—This section discusses Environmental Assessments, Environmental Impact Statements, Notices Of Intent, and Findings Of No Significant Impact. These documents describe the results of the environmental analysis, and are most often prepared from interim records developed during the various steps of the analysis. Environmental Assessments are prepardd t document

the environmental analysis for those actions when an EIS is not required. They may be supplemented or revised as necessary.

Environmental Impact Statements are prepared first in draft form, and are filed with the EPA and circulated for public review and comment. Following the review period a final Environmental Impact Statement is prepared. Both draft and final Environmental Impact Statements may be supplemented or revised.

"(a) An agency may adopt a Federal draft or final Environmental Impact Statement or portion thereof provided that the statement or portion thereof meets the standards for an adequate statement under these regulations.

"(b) If the actions covered by the original Environmental Impact Statement and the proposed actions are substantially the same the agency adopting another agency's statement is not required to recirculate it except as a final statement. Otherwise the adopting agency shall treat the statement as a draft and recirculate it (except as provided in paragraph (c) of this section).

"(c) A cooperating agency may adopt without recirculating the Environmental Impact Statement of a lead agency when, after an independent review oaf the statement, the cooperating agency concludes that its comments and suggestions have been satisfied.

"(d) When an agency adopts a statement which is not final within the agency that prepared it, or when the action it assesses is the subject of a referral under 40 CFR part 1504, or when the statement's adequacy is the subject of a judicial action which is not final, the agency shall so specify." (40 CFR 1506.3).

"(a) Responsible officials shall make sure the proposal which is the subject of an Environmental Impact Statement (or Assesment) is properly defined. Proposals or parts of proposals which are related to each other closely enough to be, in effect, a single course of action shall be evaulated in a single Impact Statement.

"(b) Environmental Impact Statements (or Assessments) may be prepared, and are sometimes required, for broad Federal actions such as the adoption of new agency programs or regulations. Agencies shall prepare statements on broad actions so that they are relevant to policy and are timed to coincide with meaningful points in agency planning and decisionmaking.

"(c) When preparing statements or assessments on broad actions, including proposals by more than one agency, agencies may find it useful to evaluate the proposal(s) in one of the following ways:

(1) Geographically, including actions occurring in the same general location, such as a body of water, region, or metropolitan area.

(2) Generically, including actions which have relevant similarities, such as common timing, impacts, alternatives, methods of implementation, media, or subject matter.

(3) By stage of technological development including Federal or federally-assisted research, development or demonstration programs for new technologies which, if applied, could significantly affect the quality of the human environment. Statements shall be prepared on such programs and shall be available before the program has reached a stage of investment or commitment to implementation likely to determine subsequent development or restrict later alternatives." (40 CFR 1502.4).

"Statements (and assessments) shall be concise, clear, and to the point, and shall be supported by evidence that the agency has made the necessary environmental analyses." (40 CFR 1502.1)

when an environmental analysis deals with the establishment of standards, criteria, and guidelines as duscussed in section 14 of RPA, as amended (section 11 of NFMA), the documentation step will record the determinations made and accompanying rationale, regarding the degree of public participation.

1952.1-Categorical Exclusions.— (Actions normally not requiring documentation). The following classes of actions have been determined not to require documenting the environmental analysis in an Environmental Assessment or an Environmental Impact Statement according to the criteria of FSM 1951.8:

An environmental analysis is required for every decision. The decision is the culmination of the analysis process. However, not all analyses need documentation. Generally, the following actions do not reuire documentation:

(a) Internal organizational changes, personnel actions, and other similar internal, operational administrative decisions.

(b) Funding or scheduling of projects—budget prpopsals and allocations at all administrative levels of the Forest Service. (This does not relieve officials of the responsibility to prepare environmental documents when otherwise required for the projects involved in the program).

(c) Unanticipated emergency situations that require immediate action to prevent or reduce risks to public health or safety or serious resource losses—including, but not limited to, fire suppression, search and resuce, and reduction of flood losses.

(d) Routine, generally repetitive operation and/or maintenance, to established standards of transportation, transmission, administrative, fire management or resource improvements.

(e) Inventories, studies, or research activities that have limited context and no or minimal intensity in terms of changes in the physical, bioligical, economic, or social components of the environment.

Categories not listed herein require documentation of the analysis. The responsible official should recognize, however, that there may be curcumstances when the environmental analysis will indicate that an action listed above should be documented.

1952.2-Actions Requiring Documentation.—Whenever an analysis is conducted, documentation will be based on the policy in 1950.3(2).

1952.21-Environmental Assessment (EA).—An Environmental Assessment is used to document the determination that an EIS is not necessry, and it will include or incorporate a FONSI.

1952.22-Environmental Impact Statement (EIS).—Environmental Impact Statements shall be an integral part of:

1. The national program required by the Forest and Rangland Renewable Resources Planning Act (P.L. 93-378).

2. Regional and National Forest land and resource management planning as required by regulations issued pursuant to redesignated section 6 of the Forest and Rangeland Renewable Resources Planning act of 1974 as amended (P.L. 88-476).

Environmental Impact Statement shall be prepared for:

1. Legislation recommended by the Forest Service.

2. Programs, projects, or other discretionary actions affecting the wilderness characteristics of RARE II further planning areas.

3. Other major Federal actions significantly affecting the quality of the human environment that have not been adequately addressed in another Environmental Impact Statement.

"Major" actions and "significant" effects are difficult to define precisely and uniformly because of the great variation in social, economic, physical, and biological conditions. "Major reinforces but does not have a meaning independent of significantly." (40 CFR

1508.18). The official responsible for taking action must determine through an environmental analysis when Environmental Impact Statements are appropriate. (See FSM 1950.3(2) and FSM 1951.8).

1952.22a Legislative Environmental Impact Statements.—"(a) The NEPA process for proposals for legislation significantly affecting the quality of the human environment shall be integrated with the legislative process of the Congress. A legislative Environmental Impact Statement is the detailed statement required by law to be included in a recommendation or report on a legislative proposal to Congress. A legislative Environmental Impact Statement shall be considered part of the formal transmittal of a legislative proposal to Congress, however, it may be transmitted to Congress up to 30 days later in order to allow time for completion of an accurate statement which can serve as the basis for public and Congressional debate. The statement must be available in time for Congressional hearings and deliberations.

"(b) preparation of a legislative environmental impact statement shall conform to the requirements of these regulations except as follows:

(1) There need not be a scoping process.

(2) The legislative statement shall be prepared in the same manner as a draft statement, but shall be considered the "detailed statement" required by statute, provided, that when any of the following conditions exist both the draft and final Environmental Impact Statement on the legislative proposal shall be prepared and circulated as provided by 40 CFR 1503.1 and 1506.1:

(i) A congressional Committee with jurisdiction over the proposal has a rule requiring both draft and final Environmental Impact Statements.

(ii) The proposal results from a study process required by statute (such as those required by the Wild and Scenic Rivers Act (16 U.S.C. 1271 et seq.) and the Wilderness Act (16 U.S.C. 1131 et seq.).

(iii) Legislative approval is sought for Federal or federally-assisted construction or other projects which the agency recommends be located at specific geographic locations.

(iv) The agency decides to prepare draft and final statements.

(c) Comments on the legislative statement shall be given to the lead agency which shall forward them along with its own responses to the Congressional committees with jurisdiction." (40 CFR 1506.8).

1952.23 Notice of Intent.—When it is determined that an EIS is needed, the responsible official will prepares a Notice of Intent. The notice shall briefly:

"(a) Describe the proposed action and possible alteratives.

"(b) Describe the agency's proposed scoping process including whether, when, and where any scoping meeting will be held.

"(c) State the name and address of a person within the agency who can answer questions about the proposed action and the environmental impact statement." (40 CFR 1508.22).

The notice must also show the estimated dates for filing the draft and final Environmental Impact Statements.

Notices of intent are used to develop lists of Environmental Impact Statements under preparation. Environmental Coordinators in the Washington, Regional, Station and Area offices shall maintain composite lists of EIS's under preparation. (See section 311.1, the NEPA Process Handbook). These composite lists may be distributed to other agencies, organizations, and individuals.

The official responsible for preparation of the EIS shall notify the appropriate Regional, Station, or Area Environmental Coordinators whenever information shown in the Notice of Intent changes.

If a Notice of Intent has been distributed and the project application is withdrawn or for some other reason it is no longer necessary to make the decision, the process can be terminated (at any time prior to the Record of Decision) by preparation of a notice and distributing it in the same manner as the Notice of Intent.

The NOI documents the decision to prepare an EIS. This decision is based on the responsible official's analysis of the need for an EIS pursuant to FSM 1951.8.

1952.24 Finding of No Significant Impact (FONSI).—"Finding Of No Significant Impact means a document by a Federal agency briefly presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an Environmental Impact Statement therefore will not be prepared. It shall include the Environmental Assessment or a summary of it and shall note any other environmental documents related to it. If the Assessment is included, the Finding need not repeat any of the discussion in the Assessment, but may incorporate it by reference." (40 CFR 1501.4). (See Section 213 FSH 1909.15) (the responsible official) "shall make the Finding Of No Significant Impact available for public review (including State and area-wide clearinghouses) for 30 days before the agency makes its final determination whether to prepare an Environmental Impact Statement and before the action may begin when:

"(i) The proposed action is, or is closely similar to, one which normally requires the preparation of an Environmental Impact Statement.

"(ii) The nature of the proposed action is one without precedent." (40 CFR 1501.4).

In all other situations, the Finding Of No Significant Impact will be included as an integral part of the Environmental Assessment, and should generally cover the same material as would have been discussed in a separate Finding.

1952.3 Format.—Environmental Assessments and Environmental Impact Statements generally conform to the following outline. The outline follows the sequence of steps in the environmental analysis (FSM 1951). Sections of the outline may be combined or rearranged in the interest of clarity and brevity.

EA or EIS Outline

1. Cover Sheet. (optional for EA).
2. Summary. (optional for EA).
3. Table of Contents. (optional for EA).
4. Introduction. (purpse and need for action).
5. Affected Environment. (situation analysis).
6. Evaluation Criteria.
7. Alternatives Considered—including management requirements and mitigation measures as appropriate.
8. Effects of Implementation. (environmental consequences).
9. Evaluation of Alternatives.
10. Identification of the Forest Service Preferred Alternative.
11. Consutation With Others.
12. Finding Of No Significant Impact. (EA only).
13. Index. (optional for EA).
14. Appendix. (optional for EA)—including:

(a) list of preparers.

(b) list of agencies, organizations, and individuals to whom the EIS or EA is being sent.

(c) substantive review comments or summaries (final EIS only).

1952.4-Contents.—Writers of Environmental Assessments or Environmental Impact Statements should use section 111 of FSH 1109.12, Directive Preparation Handbook as a guide. Writers should be concerned with content, clarity, and brevity.

Writers "shall incorporate material into an Environmental Impact Statement (or Environmental Assessment) by reference when the effect will be to cut down on bulk without impeding agency and public review of the action. The incorporated material shall be cited in the statement (or assessment) and its cntent briefly described. No material may be incorporated by reference unless it is reasonably available for inspection by potentially interested persons within the time allowed for comment. Material based on proprietary data which is itself not available for review and comment shall not be incorporated by reference." (40 CFR 1502.21).

Material incorporated by reference is considered reasonably available when:

(a) it is an Environmental Impact Statement that has been filed with the Council or EPA, or

(b) it is a book or other publication generally available in technical libraries, or

(c) it may be obtained (at the usual cost of furnishing such information) from the person listed on the cover sheet as the source of further information.

In final Environmental Impact Statements, the material listed in items 4 through 10 in FSM 1952.3 shall normally not exceed 150 pages (and preferably shorter) or 300 pages for proposals of unusual scope or complexity.

Responsible officials "shall insure the professional integrity, including scientific integrity, of the discussions and analyses in Environmental Impact Statements (and Environmental Assessments). They shall identify any methodologies used and shal make explicit reference by footnote to the scientific and other sources relied upon for conclusion in the statement (or assessment)." (40 CFR 1502.24).

"The draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements."

1. *Cover sheet* (optional for EA). See section 212.1, FSH 1909.15, NEPA Process handbook for a sample cover sheet.

The cover sheet shall not exceed one page. It shall include:

"(a) A list of the responsible agencies including the lead agency and any cooperating agencies.

"(b) The title of the proposed action that is the subject of the statement, together with the State(s) and County(ies) (or other jurisdiction if applicable) where the action is located.

"(c) The name, address, and telephone number of the person at the agency who can supply further information.

"(d) A designation of the statement as a draft, final, or draft or final supplement.

"(e) A one-paragraph abstract of the statement.

"(f) The date by which comments must be received (40 CFR 1502.11).

Since the Record of Decision accompanies the final EIS, it is not apropriate to solicit review comments for final statements. Cover sheets for final statements must explain the timing and the public right of appeal.

The name and title of the responsible official must also be shown.

2. *Summary.* The responsible official will determine the need for an environmental assessment summary. It is desirable for lengthy and detailed Environmental Assessments. It is required for Environmental Impact Statements. "Each Environmental Impact Statement shall contain a summary which adequately and accurately summarizes the statement. The summary shall stress the major conclusions, areas of controversy (including issues raised by agencies and the public), and the issues to be resolved (including the choice among alternatives). The summary will normally not exceed 15 pages." (40 CFR 1502.12).

If a summary is distributed as a separate document, it must (a) state how the complete EIS or EA can be obtained or reviewed, (b) have a cover sheet attached.

3. *Table of contents.* Self-explanatory.

4. *Introduction* (Purpose of and need for action). The introduction briefly describes the nature of the decision to be made. A map showing the general location of the plan or project should be included. Major issues, concerns, and essential background information are presented only if important to understanding the decision.

"The statement (or assessment) shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action." (40 CFR 1502.15).

Statements must, and assessments may "* * * list all Federal permits, licenses, and other entitlements which must be obtained in implementing the proposal. If it is uncertain whether a Federal permit, license, or other entitlement is necessary, the draft Environmental Impact Statement shall and (assessment may) so indicate * * *." (40 CFR 1502.25b).

5. *Affected environment.* This section is based on the situation analysis and "* * * shall succinctly describe the environment of the area(s) to be affected or created by the alternatives under consideration. The descriptions shall be no longer than is necessary to understand the effects of the alternatives. Data and analyses in a statement shall be commensurate with the importance of the impact, with less important material summarized, consolidated, or simply referenced. Agencies shall avoid useless bulk in statements and shall concentrate efforts and attention on important issues. Verbose descriptions of the affected environment are themselves no measure of the adequacy of an Environmental Impact Statement." (40 CFR 1502.15).

6. *Evaluation criteria.* This section describes the goals, objectives, and tests of feasibility used to evaluate alternatives. The sources of these criteria should be shown. (Also see FSM 1951.3)

7. *Alternatives considered.* This section is usually in two parts: The first briefly describes the process used in formulating the alternatives; and the second describes each alternative—including mitigation measures, mangement and monitoring requirements, as appropriate.

The alternatives described must include:

(a) "* * * alternatives which were elminated from detailed study (and a brief discussion of) the reasons for their having been eliminated.

(b) "* * * reasonable alternatives not within the jurisdiction of the lead agency.

(c) "* * * the alternatives of no action * * *." (40 CFR 1502.14).

The detail of description should be similar for all alternatives.

8. *Effects of implementation.* This section describes consequences of implementing each alternative in terms of outputs, costs, and environmental changes. Objectivity is important. Significant differences of opinion about the kind, amount, or duration of effects should be discussed. (See FSM 1951.6).

The description should (commensurate with the importance of the issue):

a. Identify the assumptions used in estimating the effects of implementations.

b. Make use of appropriate analyses, data, and information. Cite sources used instead of including lengthy analyses in EA's or EIS's.

c. Express expected environmental changes in quanititative or qualitative terms as applicable, and as necessary to indicate relative differences between the alternative in terms of significance, duration, and magnitude of the changes.

d. Indicate the expected outputs, in terms of goods, services, and uses that will result from implementing each alternative. Express the outputs in service-wide standard terminology. See FSH 1309.11 Management Information Handbook. Use RPA program planning time periods.

e. Indicate estimated Forest Service expenditures for implementing each alternative. Other public and private expenditures may be shown, as appropriate.

f. Discuss significant changes (effects) in physical, biological, economic, and social components of the environment associated with implementation of each alternative. This includes direct, indirect, cumulative, and unavoidable effects, long- and short-term relationships, and irreversible and irretrievable resource commitments. It is not mandatory to use separate headings for these items. "The agency shall make every effort to disclose and discuss at appropriate points in the draft statement all major points of view on the environmental impacts of the alternatives including the proposed action." (40 CFR 1502.9a).

If analyses of economic efficiency (benefit/cost, etc.) have been made, show the results of the analyses here.

"When an agency is evaluating significant adverse effects on the human environment in an Environmental Impact Statement (or assessment) and there are gaps in relevant information or scientific uncertainty, the agency shall always make clear that such information is lacking or that uncertainty exists.

"If the information relevant to adverse impacts is essential to a reasoned choice among alternatives and is not known and the overall costs of obtaining it are not exorbitant, the agency shall include the information in the Environmental Impact Statement (or assessment)." (40 CFR 1502.22).

9. *Evaluation of alternatives.* This section discusses how the alternatives compare with each other in terms of the evaluation criteria. This provides the basis for identification of a preferred alternative. (Also see FSM 191.8).

"Statements shall discuss any inconsistency of a proposed action with any approved State or local plan and laws (whether or not federally sanctioned)." (40 CFR 1506.2(d)).

"When a cost-benefit analysis is prepared, discuss the relationship between that analysis and any analyses of unquantified environmental impacts, values, and amenities. For purposes of complying with the Act, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative consideration. In any event, an Environmental Impact Statement should at least indicate those considerations, including factors not related to environmental quality, which are likely to be relevant and important to a decision." (40 CFR 1502.23).

"Environmental Impact Statements (and assessments) shall state how alternatives considered in it and decisions based on it will achieve the requirements of sections 101 and 102(1) of the Act and other environmental laws and policies." (40 CFR 1502.2(d).

10. *Identification of the Forest Service preferred alternative.* This section identifies the preferred alternative and the rationale for preference. If the absence of a preferred alternative has been approved by the Chief, the draft EIS must explain why. (Also see FSM 1951.8).

11. *Consultation with others.* Indicate the methods used to obtain public involvement and list the agencies and groups consulted during the analysis. Individuals may be listed when appropriate. This discussion should relate to substantive information received and used and not be directed solely to responses and rebuttals.

"Final Environmental Impact Statements shall respond to comments. The agency shall discuss at appropriate points in the final statement any responsible opposing view which was not adequately discussed in the draft statement and shall indicate the agency's response to the issues raised." (40 CFR 1502.9).

This section of a final EIS should describe how the substantive information contained in the review comments (that are included in the appendix) was used, or not used, in the preparation of the final EIS.

Final Environmental Impact Statements should identify changes in the draft EIS content as a result of substantive review comments. Possible changes are to modify the proposed action; formulate, analyze, and evaluate alternatives not previously considered; supplement, improve, or modify analyses, or make factual corrections. In addition, it may be desirable to explain why some comments did not warrant changes in the draft EIS content.

12. *Finding Of No Significant Impact (EA only).* The rationale for the Finding that the action will not have a significant effect on the human environment will be summarized from the analysis and evaluation sections. It may be a separate or an integral part of the EA (FSM 1952.24). (See also section 213, FSH 1909.15 for a sample Finding Of No Significant Impact).

13. *Index (optional in EA).* Environmental Impact Statements must include an index. See section 215, FSH 1909.15, the NEPA Process Handbook. The purpose of an index is to make all of the information in the EIS or EA fully available to the reader without delay.

14. *Appendix.* "The appendix shall:

"(a) Consist of material prepared in connection with an Environmental Impact Statement (or assessment) (as distinct from material which is not so prepared and which is incorporated by reference (40 CFR 1502.21).

"(b) Normally consist of material which substantiates any analysis fundamental to the impact statement (or assessment).

"(c) Normally be analytic and relevant to the decision to be made.

"(d) Be circulated with the Environmental Impact Statement (or assessment) or be readily available on request." (40 CFR 1502.18).

"(e) The EIS appendix shall, and the EA appendix may, "list the names, together with their qualifications (expertise, experience, professional disciplines), of the persons who were primarily responsible for preparing the Environmental Impact Statement or significant background papers, including basic components of the statement. Where possible the persons who are responsible for a particular analysis, including analyses in background papers, shall be identified. Normally the list will not exceed two pages." (40 CFR 1502.17).

Copies of all substantive comments received on a draft EIS should be included in the appendix of the final EIS. If response has been exceptionally voluminous, it may be summarized. Copies, or summarize of all substantive comments should be included in the appendix, regardless of whether or not the comment is thought to merit individual attention in the text of the EIS.

The appendix shall contain the list of agencies, organizations and individuals to whom copies of the statement are sent.

1952.5—Processing.

1952.51—Environmental Assessments.—Regional Foresters, Area and Station Directors shall develop procedures as necessary for processing Environmental Assessments.

1952.52—Finding Of No Significant Impact.—See FSM 1952.24 and Section 214.3, FSH 1909.15 regarding processing of the Finding Of No Significant Impact. In the case of an action with effects of National concern, the Finding shall be

published in the Federal Register and be sent to State and Area clearinghouses, national organizations reasonably expected to be interested and to those who have requested it. For actions of local concern, see FSM 1951.1 for circulation requirements.

1952.53—Notice of Intent.—See FSM 1952.23 and Section 214.1 of FSH 1909.15. The Notice of Intent should be published in the Federal Register and a newspaper of general circulation in the area affected by the decision. The appropriate State or local A-95 clearinghouses should be notified. Copies of the Notice may also be distributed to agencies, organizations and individuals as the responsible official feels is appropriate. One copy of the Notice of Intent must be sent to the Washington Office Environmental Coordinator.

1952.54—Environmental Impact Statement.—The following steps are to be taken after a draft EIS has been prepared:

1. File the draft EIS with the EPA and circulate it to agencies and the public.
2. Conduct public participation sessions if appropriate.
3. Review, analyze, evaluate, and respond to substantive comments on the draft EIS.
4. Prepare a final EIS.
5. Prepare, sign and date Record of Decision (FSM 1953.3) to accompany the final EIS. (See Section 310, FSH 1909.15 for a sample Record of Decision).
6. File the final EIS, Record of Decision, and copies of all substantive comments or summaries thereof on the draft EIS (not otherwise included in the final EIS) with the EPA. Circulate the final EIS and Record of Decision to other agencies and the public.

1952.54a Filing.—Regional Foresters, Station Directors, and Area Directors are authorized to file statements directly with the EPA for actions within their authority.

"Environmental Impact Statements shall be filed with EPA no earlier than they are also transmitted to commenting agencies and made available to the public." (40 CFR 1506.9.)

Regional Foresters and Station Directors may redelegate as appropriate the authority to file Statements directly with the EPA.

Statements involving legislation, regulations, multi-agency actions at the national level, and service-wide policy will be filed with the EPA by the Chief's Office.

If the Chief is the responsible official, other levels of the Forest Service may assist with the analysia and preparation of documents. However, each step of the analysis process will be coordinated with the Chief or designated acting.

Copies of both draft and final Environmental Impact Statement will require similar clearance before printing.

If the final EIS deals with plans, programs, or projects which involve RARE II "further planning areas," the Chief wil file the final EIS with the EPA. Public distribution will be made when the responsible official is notified that the final EIS has been filed by the Chief.

See section 214.2a of FSH 1909.15 for instructions regarding filing procedures.

1952.54b Circulation.—Responsible officials shall circulate the entire draft and final Environmental Impact Statements. However, if the statement is unusually long, a summary may be circulated instead, except that the entire statement shall be furnished to:

"(a) Any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved and any appropriate Federal, State or local agency authorized to develop and enforce environmental standards.

"(b) The applicant, if any.

"(c) Any person, organization, or agency requesting the entire Environmental Impact statement.

"(d) In the case of a final Environmental Impact Statement any person, organization, or agency which submitted substantive comments on the draft.

"If the agency circulates the summary and thereafter receives a timely request for the entire statement and for additional time to comment, the time for that requester only shall be extended by at least 15 days beyond the minimum period." (40 CFR 1502.19.)

When the EIS is filed with the EPA, the responsible official shall insure that a reasonable number of copies of the statement is available free of charge.

When a summary of an EIS is circulated as a separate document, it must contain a cover sheet as per FSM 1952.4(1).

Copies of all review comments should be available for public in-service review in the office of the responsible official or administrative unit affected by the policy, plan, program or project.

Responsible officials should insure that lists of individuals, groups, organizations, and governmental agencies which may be interested in reviewing Forest Service Environmental Impact Statements are maintained. Regions are encouraged to develop specific distribution lists.

The A-95 Clearinghouses should be used, by mutual agreement, for securing reviews of the draft EIS. The responsible official may also deal directly with appropriate State or local officials or agencies if clearinghouses are unwilling or unable to handle this phase of the process. However, clearinghouses should always receive copies of Environmental Impact Statements.

Section 214.2a of FSH 1909.15 shows address of Federal agencies and the number of EIS copies requested by that agency. Statements should be distributed as shown in that Section.

1952.6 Corrections, Supplements, or Revisions.—Environmental Assessments and Environmental Impact Statements may be corrected through use of errata sheets, or modified by supplements, or revisions. Supplements or revisions are prepared, circulated, filed and reviewed the same as the document being modified.

1952.61 Environmental Assessments.—Additional information may emerge after an EA has been prepared. If the new information involves minor changes, such as typographical corrections, that would not affect public response or the decision, the corrections should be noted in the file copy of the EA.

If the new information may change the public response or the decision, the EA should be supplemented or revised.

1952.62 Draft Environmental Impact Statement.—Errata sheets should be used when minor corrections are necessary that will not materially change the public response or the decision. Typical items include terminology and typographical corrections.

Responsible officials shall insure preparation of ". . . supplements to either draft or final Environmental Impact Statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns, or

(ii) There are significant new circumstances, or information relevant to environmental concerns and bearing on the proposed action or its impacts. . . ." (40 CFR 1502.9).

They ". . . may also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so, (and)

". . . shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council." (40 CFR 1502.9).

Supplements to the draft EIS are used when new or more accurate information may significantly change the public response or the decision. A revision to a draft EIS is necessary when, in the

judgment of the responsible official, comments on the draft clearly indicate that meaningful analysis was not possible.

When a supplement or revision is circulated the transmittal letter should establish a review period of at least 60 days from the date of transmittal of the supplement or revision.

1952.63 Final Environmental Impact Statements.—Additional information may emerge after a final EIS has been prepared and circulated. If the new information involves minor changes that would not affect public reaction or the decision, the corrections should be noted in the file copy of the final EIS. If the responsible official determines that the new information might change the decision and require additional public comment, a supplement to the final EIS should be prepared, filed and circulated in the same manner as the original document.

When the supplement is circulated, the transmittal letter shall establish a review period of at least 60 days from the date of transmittal of the supplement, and notify reviewers that a Record of Decision will be prepared, filed and circulated.

If additional public comment is not needed, a supplement or revision to the final EIS should be prepared, filed and circulated with a revised Record of Decision. The Record of Decision will include an explanation of the basis for deciding additional public comment was not needed.

1952.7 Commenting

1952.71 Forest Service Environmental Impact Statements.

1952.71a Draft Environmental Impact Statements.

"After preparing a draft Environmental Impact Statement and before preparing a final Environmental Impact Statement, the agency shall:

"(1) Obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved or which is authorized to develop and enforce environmental standards.

"(2) Request the comments of:

(i) Appropriate State and local agencies which are authorized to develop and enforce environmental standards;

(ii) Indian tribes, when the effects may be on a reservation; and,

(iii) Any agency which has requested that it receive statements on actions of the kind proposed.

"Office of Management and Budget Circular A-95 (Revised), through its system of clearinghouses, provides a means of securing the views of State and local environmental agencies. The clearinghouses may be used, by mutual agreement of the lead agency and the clearinghouse, for securing State and local reviews of the draft Environmental Impact Statements.

"(3) Request comments from the applicant, if any.

"(4) Request comments from the public, affirmatively soliciting comments from those persons or organizations who may be interested or affected." (40 CFR 1503.1(a)).

A period of at least 60 days from the date of transmittal to the Environmental Protection Agency will be allowed for comment. The responsible official may extend the comment period.

1952.71b Final Environmental Impact Statements.—For final EIS's a period of not less than 45 days from the date of transmittal of the final EIS to the EPA will be allowed before decisions are implemented. The Record of Decision shall be dated on the date that the final EIS is transmitted to the EPA and the public.

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing these provisions, the Chief's Office shall consult with the Council about alternative arrangements and actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

Comments received after the final EIS is filed should be answered on an individual basis.

"(a) An agency preparing a final Environmental Impact Statement shall assess and consider comments both individually and collectively, and shall respond by one or more of the means listed below, stating its reponse in the final statement. Possible responses are to:

(1) Modify alternatives including the proposed action.

(2) Develop and evaluate alternatives not previously given serious consideration by the agency.

(3) Supplement, improve, or modify its analyses.

(4) Make factual corrections.

(5) Explain why the comments do not warrant further agency response, citing the sources, authorities, or reasons which support the agency's position and, if appropriate, indicate those circumstances which would trigger agency reappraisal or further response.

"(b) All substantive comments received on the draft statement (or summaries thereof where the response has been exceptionally voluminous) should be attached to the final Statement whether or not the comment is thought to merit individual discussion by the agency in the text of the Statement.

"(c) If changes in response to comments are minor and are confined to the responses described in paragraphs (a)(4) and (5) of this section, agencies may write them on errata sheets and attach them to the statement instead of rewriting the draft statement. In such cases only the comments, the responses, and the changes and not the final statement need to be circulated. The entire document with a new cover sheet shall be filed as the final statement." (40 CFR 1503.4).

1952.72 Review of Other Agency Environmental Impact Statements.—When requested to do so, the Forest Service must review and comment on Environmental Impact Statements prepared by other agencies, as appropriate, because of special expertise. When another agency proposal involves or affects National Forest System lands, or prime timber lands, the Forest Service will review the Environmental Impact Statement.

Unless otherwise assigned by the Chief, review and comment on legislative or other major policies, regulations, or national program proposals will be made by the Washington Office. The Regional Forester or Area Director in whose region or area a proposal is located will review other Environmental Impact Statements and submit comments directly to the appropriate agency. Where appropriate, Statements should be sent to Station Directors or other Forest Service officials for comment. When another agency's Environmental Impact Statement involves more than one Region, the responses shall be coordinated with the Washington Office Environmental Coordinator.

When reviewing other agency's statements, responsible officials shall insure "* * * comment within the time period specified for comment." (40 CFR 1503.2). If appropriate, a no-comment response can be made. If the Forest Service is a cooperating agency and "* * * is satisfied that its views are adequately reflected in the environmental impact statement, it should reply that it has no comment." (40 CFR 1503.2).

"(a) Comment on an Environmental Impact Statement or on a proposed action shall be as specific as possible and may address either the adequacy of the statement or the merits of the alternatives discussed or both.

"(b) When a commenting agency criticizes a lead aency's predictive

methodology, the commenting agency should describe the alternative methodology which it prefers and why.

"(c) A cooperating agency shall specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft statements's analysis of significant site-specific effects associated with the granting or approving by that cooperating agency of necessary Federal permits, licenses, or entitlements.

"(d) When a cooperating agency with jurisdiction by law objects to or expresses reservations about the proposal on grounds of environmental impacts, the agency expressing the objection or reservation shall specify the mitigation measures it considers necessary to allow the agency to grant or approve applicable permit, license, or related requirements of concurrences." (40 CFR 1503.3).

One copy of Forest Service comments on other agency Environmental Impact Statements should be sent to the Washington Office Environmental Coordinator. If comments are made on final Environmental Impact Statements, one copy should also be sent to EPA.

1952.72a Referrals.—When it has been determined, after review of another agency's Environmental Impact Statement, that the proposal would be environmentally unsatisfactory, the matter will be referred to the Council by the Secretary's Office. Referrals should reflect a careful determination that the proposed action raises significant environmental issues of national importance. However, referrals will only be made to Council after concerted, timely, but unsuccessful attempts to resolve the differences with the proposing agency. If an agreement cannot be reached, the lead agency shall be advised at the earliest possible time (in a letter signed by the Secretary of Agriculture) of the Department's intent to refer a proposal to the Council. Such advice shall be included in FS comments on the lead agency's draft EIS unless the draft EIS contains insufficient information to permit an assessment of the proposals environmental acceptability. (Where such needed information is not contained in the draft EIS, the FS shall identify the needed information and request that it be made available by the lead agency at the earliest possible time).

The referral package shall be sent to the Chief's Office and shall consist of: A draft letter to be signed by the Secretary informing the lead agency of the referral, the reasons for it and requesting that the lead agency take no action to implement the proposal until the referral is acted upon by the Council. The letter shall include a statement supported by evidence as to the specific facts, or controverted facts, leading to the conclusion that the proposal is unsatisfactory from the standpoint of public health or welfare or environmental quality. The statement shall:

1. identify any material facts in controversy as well as incorporate (by reference if appropriate) agreed upon facts.

2. identify any existing environmental laws or policies which would be violated by the proposal.

3. present the reasons the Forest Service believes the proposal is environmentally unsatisfactory.

4. contain a finding as to whether the issue raised is one of national importance because of the threat to national environmental resources or policies for some other reason.

5. review the steps taken by the Forest Service to bring our concerns to the attention of the lead agency at the earliest possible time, and

6. give Forest Service recommendations as to what mitigation, alternatives, further study, or other course of action (including abandonment of the proposal) are necessary to remedy the situation.

The referral shall be delivered by the Secretary's Office to the Council not later than 25 days afer the final EIS is made available to the EPA, commenting agencies, and the public. Except where an extension has been granted by the lead agency.

1953—Decision.

1953.1 Record of Decision.—A Record of Decision is a separate document which accompanies the final Environmental Impact Statements. The Record of Decision shall:

"(a) State what the decision was.

"(b) Identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision.

"(c) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not. A monitoring and enforcement program shall be adopted and summarized where applicable for any mitigation." (40 CFR 1502.2).

If a separate summary of the final EIS is distributed, the Record of Decision should also be attached to each summary before distribution.

The Record of Decision establishes the date of decision and must be dated on the date that it and the final EIS are transmitted to the EPA and made available to the public. The 45-day period for administrative reviews (appeals) (36 CFR 211.19d) therefore starts with the date on the Record of Decision. Records of Decision must not be predated nor postdated. Records of Decision shall not be signed and dated until at least 90 days after the EPA publishes the notice of availability of the draft EIS in the Federal Register, unless the EPA has reduced or extended the standard period for comments. See Exhibit 1 for a listing of conditions that must be met prior to a decision.

When joint lead agencies are identified in an EIS, the responsible official from each agency shall sign and date the Record of Decision for those actions within their authority. Separate Records of Decision may be prepared by each responsible official.

The Record of Decision should state that implementation will not take place until at least 45 days from the date that the Record is transmitted to the EPA and made available to the public.

The Record of Decision should be sent to:

1. Individuals, organizations, or agencies affected by the decision.

2. Others who have requested such notice in writing.

In addition, the public may be notified by publishing the Record of Decision in a newspaper of general circulation in the area affected by the decision. See section 310 of FSH 1909.15, the NEPA Process Handbook, for a sample Record of Decision.

1953.2 Decision Notice.—A Decision Notice is normally a separate document which is attached to Environmental Assessments. For simple EA's, rather than portray the decision as a separate notice, it can be an integral part of the EA. (See section 213, FSH 1909.15—second sample).

The responsible official should insure that the public is notified of the decision, as appropriate. (FSM 1951.1 and 1952.52). The Decision Notice shall be dated on the date that it and the EA

are made available to the public. Decision Notices must not be predated nor postdated.

The 45-day period for administrative review (appeals) (36 CFR 211.19c) starts with the date of the decision, which is the date on the Decision Notice.

When a separate Decision Notice is prepared, it should clearly identify the decision, the rationale used, and show the environmental consideration used in the decisionmaking.

1953.21 Decision Notice for Unprecedented Actions or Actions Similar to Those Which Normally Require an EIS.—The Decision Notice shall not be signed and dated until after the Finding of No Significant Impact has been available for public review for a 30-day period (including State and area clearinghouses) when:

(1) the proposed action is, or is closely similar to on which normally requires preparation of an EIS, or

(2) the nature of the proposed action is without precedent.

In these cases, the Decision Notice constitutes the final determination that an EIS is not needed. This should be stated in the Decision Notice.

1953.22 Decision Notice for Actions Involving Flood Plains or Wetlands.—The Decision Notice shall be signed and dated as specified in FSM 1953.2. The Decision Notice shall state that implementation will not take place until 30 days have elapsed to allow public review as required by E.O. 11988 and E.O. 11990.

Exhibit 1

If an EIS is required for	These conditions must be met prior to a decision	These conditions must be met prior to implementation
Plans, programs, or projects *other than* (a) land management plans, (b) decisions affecting the wilderness character of RARE II "further planning" areas, or (c) areas involved in pending legislation for wilderness designation.	1. 60 days have elapsed since the draft EIS was transmitted to the EPA and distributed to the public. 2. 45 days have elapsed since the notice of availability of the draft EIS was published in the FEDERAL REGISTER by EPA 3. An EA that responds to comments on the draft EIS and that will be documented in a final EIS has been completed	1. 45 days have elapsed since the Record of Decision was signed and dated. 2. 30 days have elapsed since the date of publication of the notice of the final EIS in the FEDERAL REGISTER by EPA. (The periods shown above usually will run concurrently.)
Land management or other plans, programs, or projects affecting the Wilderness character of RARE II "further planning" areas.	1. Same as 1 above. 2. Same as 2 above. 3. Same as 3 above 4. If the action is a land management plan, the alternative plans under consideration have been available to the public for a period of at least three months	1. Same as 1 above 2. Same as 2 above 3. 90 days while Congress is in session have elapsed since the date of publication of the final EIS in FEDERAL REGISTER. 4. An extension of time has not been requested by the appropriate congressional committee chairman. 5. The Washington Office has notified the responsible official that *condition 4* above has been met.
Land management or other plans, programs, or projects affecting areas involved in pending legislation for wilderness designation.	1. Same as 1 above 2. Same as 2 above 3. Same as 3 above 4. Same as 4 above 5. Approval has been received from the Chief	1. Same as 1 above. 2. Same as 2 above. 3. The W.O. has notified the responsible official that the Department has no objections.
Land management plans	1. Same as 1 above 2. Same as 2 above 3. Same as 3 above 4. Same as 4 above	1. Same as 1 above. 2. Same as 2 above.

1954 Implementation, monitoring, and control.

1954.1 Implementation.—Conditions listed in Exhibit 1 must be met prior to implementation of the decision, if an EIS is required. Implementation specifically includes responding to any commitments for mitigation or monitoring included in the EA, final EIS, Record of Decision or Decision Notice.

1954.2 Monitoring.—Actions will be implemented and monitored to insure that (1) environmental safeguards are executed according to plan, (2) necessary adjustments are made to achieve desired environmental effects, and (3) anticipated results and projections are reviewed.

Responsible officials "may provide for monitoring to assure that their decisions are carried out and should do so in important cases. Mitigation . . . and other conditions established in the Environmental Impact Statement or during its review and committed as part of the decision shall be implemented by the lead agency or other appropriate consenting agency. The lead agency shall:

(a) Include appropriate conditions in grants, permits, or other approvals.

(b) Condition funding of actions on mitigation.

(c) Upon request, inform cooperating or commenting agencies on progress in carrying out mitigation measures which they have proposed and which were adopted by the agency making the decision.

(d) Upon request, make available to the public the results of relevant monitoring." (40 CFR 1505.3).

1954.3 Control.—Management reviewers (FSM 1410) will discuss the results and environmental effects of plans, projects, and programs as part of activity, program, and general management reviews at all organizational levels. Such a review should compare the actual on-the-ground results with anticipated effects described in the EA or final EIS.

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BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Massachusetts Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Massachusetts Advisory Committee (SAC) of the Commission will convene at 4:00 pm and will end at 6:00 pm, on May 23, 1979, at 34½ Beacon Street, Boston, Massachusetts.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeast Regional Office, 26 Federal Plaza, Room 1639, New York, New York 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., April 18, 1979.

John I. Binkley,
Advisory Committee Management Officer.

[FR Doc. 79-12453 Filed 4-20-79; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Number of Employees, Payrolls, Geographic Location, Current Status, and Kind of Business for the Establishments of Multiestablishment Companies; Notice of Consideration for Surveys

Notice is hereby given that the Bureau of the Census is considering a proposal to continue to conduct a Company Organization Survey for 1979 under the provisions of title 13, United States Code, sections 182, 224, and 225. This survey, which has been conducted for many years, is designated to collect information on the number of employees, payrolls, geographic location, current status, and kind of business for the establishments of multiestablishment companies. The information will be used to update company and establishment changes to the multiestablishment companies in the Standard Statistical Establishment List. The data will have significant application to the needs of the public and to governmental agencies, and are not publicly available from nongovernmental or governmental sources.

The survey, if conducted, shall begin not earlier than December 1, 1979.

Copies of the proposed forms are available on request to the Director, Bureau of the Census, Washington, D.C. 20233.

Any suggestions or recommendations concerning the subject matter of the proposed survey submitted to the Director in writing on or before June 22, 1979 will receive consideration.

Dated: April 18, 1979.

Robert L. Hagan,
Acting Director, Bureau of the Census.

[FR Doc. 79-12450 Filed 4-20-79; 8:45 am]

BILLING CODE 3510-07-M

National Oceanic and Atmospheric Administration

Issuance of Permit

On March 8, 1979, notice was published in the Federal Register (44 FR 12726), that an application had been filed with the National Marine Fisheries Service by Point Reyes Bird Observatory, Stinson Beach, California 94970, for a permit to take 3700 Northern elephant seals *(Mirounga angustirostris)* over a period of 5 years for scientific research.

Notice is hereby given that on April 9, 1979, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Scientific Research Permit to Point Reyes Bird Observatory for the above taking subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731.

Dated: April 9, 1979.

Winfred H. Meibohm,
Executive Director, National Marine Fisheries Service.

[FR Doc. 79-12374 Filed 4-20-79; 8:45 am]

BILLING CODE 3510-22-M

Issuance of Permit

On February 7, 1979, Notice was published in the Federal Register (43 FR 7790), that an application had been filed with the National Marine Fisheries Service by Wometco Miami Seaquarium, 4400 Rickenbacker Causeway, Key Biscayne, Florida 33149, for a public display permit to take three (3) Atlantic bottlenose dolphins *(Tursiops truncatus).*

Notice is hereby given that on April 10, 1979, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a public display permit to Wometco Miami Seaquarium subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33702.

Dated: April 10, 1979.

Winfred H. Meibohm,

Associate Director, National Marine Fisheries Service.

[FR Doc. 79-12375 Filed 4-20-79; 8:45 am]

BILLING CODE 3510-22-M

Issuance of Permit

On February 5, 1979, Notice was published in the Federal Register (44 FR 6975), that an application has been filed with the National Marine Fisheries Service by Edward C. Murphy and Agnes A. Hoover, University of Alaska, Fairbanks, Alaska, to take by marking up to 1,000 harbor seals (*Phoca vitulina richardii*) for scientific research.

Notice is hereby given that on April 15, 1979, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the National Marine Fisheries Service issued a Scientific Research Permit for the above taking to Dr. Murphy and Ms. Hoover, subject to certain conditions set forth therein.

The Permit is available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: April 15, 1979.

Winfred H. Meibolm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-12376 Filed 4-20-79; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on V/STOL Aircraft, Phase II; Advisory Committee Meeting

The Defense Science Board Task Force on V/STOL Aircraft, Phase II will meet in closed session on May 25, 1979 in Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

A meeting of the Task Force on V/STOL Aircraft, Phase II has been scheduled for 25 May 1979 to evaluate the potential of V/STOL technology for future military and naval missions.

In accordance with 5 U.S.C. App. I 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly this meeting will be closed to the public.

April 18, 1979

H. E. Lofdahl,

Deputy Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc 79-12488 Filed 4-20-79; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

National Petroleum Council, Refinery Capability Task Group and the Coordinating Subcommittee of the Committee on Refinery Flexibility; Meetings

Notice is hereby given that the Refinery Capability Task Group and the Coordinating Subcommittee of the National Petroleum Council's Committee on Refinery Flexibility will meet at the National Petroleum Council (NPC) Headquarters, 1625 K Street, NW, Washington, DC, on Friday, May 11, and Friday, May 25, 1979, respectively. These meetings had been originally scheduled for April 26 (Task Group) and May 11 (Coordinating Subcommittee).

The National Petroleum Council provides technical advice and information to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries. Accordingly, the Committee on Refinery Flexibility has been requested by the Secretary to undertake an analysis of the factors affecting crude oil quality and availability and the ability of the refining industry to process such crudes into marketable products. This analysis will be based on information and data to be gathered by the Oil Supply, Demand, and Logistics Task Group and the Refinery Capability Task Group, whose efforts will be coordinated by the Coordinating Subcommittee. The tentative agendas of both the Task Group and Coordinating Subcommittee sessions are as follows:

Agenda for the May 11, 1979 meeting of the Refinery Capability Task Group:

1. Introductory remarks.
2. Review summary minutes of the February 6, 1979 meeting of the Refinery Capability Task Group.
3. Review executive summary draft and data from Part I of the Refinery Capability survey.
4. Develop plans for reporting data from Parts II and III of the Refinery Capability survey.
5. discuss any other matters pertinent to the overall assignment of the Task Group.

This meeting will convene at 9:00 a.m.

Agenda for the May 25, 1979 meeting of the Coordinating Subcommittee:

1. Introductory remarks by Warren B. Davis, Chairman.
2. Remarks by Frank A. Verrastro, Government Cochairman.
3. Discussion and review of the scope of the study.
4. Discussion of any other matters pertinent to the overall assignment of the Coordinating Subcommittee.
5. Discussion and review of the progress of the Task Group.

This meeting will convene at 10:00 a.m.

All meetings are open to the public. The Chairmen of the Subcommittee and Task Group are empowered to conduct the meetings in a fashion that will, in their judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with either the Task Group of the Coordinating Subcommittee will be permitted to do so, either before or after the meetings. Members of the public who wish to make oral statements should inform Mr. Gene Peer, U.S. Department of Energy (202) 633-9179, prior to the meetings, and reasonable provision will be made for their appearance on the agenda. Summary/minutes of the Task Group meetings and transcripts of the Subcommittee session will be available for public review at the Freedom of Information Public Reading Room, Room GA-152, Department of Energy, Forrestal Bldg., 1000 Independence Avenue, SW, Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on April 17, 1979.

Alvin L. Alm,

Assistant Secretary, Policy and Evaluation.

[FR Doc. 79-12466 Filed 4-20-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Advisory Committee on Revision of Rules of Practice and Procedure, Subcommittee on Ex Parte and Separation of Functions Meeting

April 18, 1979.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that the Subcommittee on Ex Parte and Separation of Functions of the Advisory Committee on Revision of Rules of Practice and Procedure will meet Friday, May 4, 1979 from 2 p.m. to 5 p.m., at the Federal Energy Regulatory Commission, North Building, 825 North Capitol Street, N.E., Room 3200, Washington, D.C.

The purpose of the subcommittee meeting is to discuss a staff proposal on

revising the Federal Energy Regulatory Commission's rules on exparte and separation of functions.

The meeting is open to the public. A transcript of the meeting will be available for public review and copying at FERC's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., between the hours of 8:30 a.m. and 5:00 p.m. Monday through Friday except Federal holidays. In addition, any person may purchase a copy of the transcript from the reporter.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 79-12409 Filed 4-20-79; 8:45 am]
BILLING CODE 6450-01-M

Amerada Hess Corp.; Notice of Determination By a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

April 12, 1979.

On March 29, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of New Mexico

Energy and Minerals Department, Oil Conservation Division

FERC Control Number: JD79-2648
API Well Number: 30-025-26170
Section of NGPA: 103
Operator: Amerada Hess Corporation
Well Name: State "O" No. 5
Field: Eumont
County: Lea
Purchaser: Northern Natural Gas Company
Volume: 219 MMcf/

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before May 8, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 79-12439 Filed 4-20-79; 8:45 am]
BILLING CODE 6450-01-M

Arapahoe Production Co. v. Panhandle Producing Co., et al.; Order Granting Relief, and Granting Petition To Intervene Out of Time

Issued April 13, 1979.

Background

On April 28, 1978, Arapahoe Production Company (Arapahoe), a small producer certificate holder in Docket No. CS71-1002, filed an application for relief in Docket No. CI78-705, stating that Panhandle Producing Company, *et al.* (Panhandle) refuses to pay it the small producer rates [1] for gas produced since August 28, 1975, for sales from certain gas reserves that Arapahoe purchased from Gulf Oil Corporation (Gulf) in 1969. The properties involved are located in Hutchinson County, Texas, and were developed by Gulf, a large producer, prior to being sold to Arapahoe.

Arapahoe alleges that Panhandle refuses to abide by Order No. 428-B which provides that the blanket certificate authorization prescribed therein is applicable to small producer sales made from large producer developed reserves acquired prior to March 18, 1971. Arapahoe contends that it cannot afford to continue service to Panhandle at a rate of less than it is entitled to under its contract and the Commission's regulations. Therefore, Arapahoe requests that it be permitted to abandon the sale to Panhandle provided that Arapahoe thereafter continues to sell the gas in interstate commerce under terms no less favorable than those contained in its contract with Panhandle. Arapahoe contends that it is not asking for an adjudication of the contractual rights between Arapahoe and Panhandle, but rather is directing its request for relief to its obligation under the Natural Gas Act.

On May 8, 1978, Panhandle filed a response to Arapahoe's application denying that Arapahoe is entitled to the requested relief. Panhandle contends it was Opinion No. 742, issued August 28, 1975, not Order No. 428-B, which authorized a small producer rate not to exceed 130% of the Commission determined base ceiling rate applicable to a comparable large producer, and that Opinion No. 742 expressly provided as follows:

"Rate regulation as prescribed herein shall not apply to any jurisdictional sales made by a small producer where the gas reserves relating thereto were acquired by the purchase of developed reserves in place from a large producer."

Panhandle states that Arapahoe, having acquired the developed reserves from a large producer, is not entitled to the rates authorized under Opinion No. 742.

Panhandle also advised in its response that Arapahoe has filed suit against Panhandle in the District Court of Hutchinson County, Texas, seeking the same pricing relief as requested from the Commission.[2] Panhandle contends that the dual filing of the suit and the application for relief exposes Panhandle to the possibility of double jeopardy and that by filing such suit Arapahoe has recognized that the pricing aspect involves private contractual rights which can be determined by the court. Therefore, Panhandle requests that Arapahoe be denied its relief respecting price or stay a ruling until Arapahoe's rights are judicially determined.

Additionally, Panhandle states that Arapahoe's request for abandonment is not in conformity with the Commission's regulations. Panhandle requests that the Commission either deny the abandonment or require supplemental information to make the application conform with the requirements of the Regulations.

On May 12, 1978, Arapahoe responded to Panhandle's comments and stressed that there is nothing in Opinion No. 742 to indicate that the Commission's prior treatment of small producer sales from large producer developed reserves was intended to be modified. Since Order No. 428-B specifically denied small producer rate treatment to sales from large producer developed reserves acquired by small producers on or after March 18, 1971, Arapahoe contends that the Commission by definition found pre-March 18, 1971, acquisitions to be subject to small producer rate treatment. Moreover, Arapahoe notes that this point is clarified by Order No. 568, issued on July 14, 1977, which defines small producer reserves, in part, as ". . . developed reserves held on March 17, 1971, by a small producer, regarless of whether such reserves were developed by a large or small producer . . ." Arapahoe contends that in so providing, Order No. 568 simply continues in effect the policy which the Commission adopted in Order Nos. 428 and 428-B and that it is illogical and arbitrary that Order No. 742 should be interpreted differently.

[1] Base rates of 68.3¢, 67.6¢, 68.9¢ and 70.2¢ for gas sold in 1975, 1976, 1977 and 1978, respectively, as adjusted for tax and Btu content. Apparently, Panhandle is paying some monies to Arapahoe on a continuing basis, but is withholding a portion of these rates pending resolution of this issue by the Commission.

[2] Since this is a matter of the regulation of small producers, under *Ashland Oil & Refining Co.* v. *FPC*, 421 F2d 17 (CA6, 1970) the Commission has the authority to proceed regardless of the existence of the proceeding in the state court.

Arapahoe further states that Panhandle had previously refused to pay the small producer rate on the Gulf developed reserved because of a dispute as to whether such rates were contractually permitted. However, Arapahoe claims that in a letter dated December 14, 1977, Panhandle finally admitted that such rates were contractually permitted, but then refused to pay the small producer rate allegedly because of the provisions of Opinion No. 742.

In its supplement, Arapahoe also refers to the litigation against Panhandle in the District Court of Hutchinson County, Texas, to recover the small producer increment and to Panhandle's reference in its response to "double jeopardy". Arapahoe states that if Panhandle pays Arapahoe the small producer increment, Arapahoe will have to dismiss both this proceeding and the state court proceeding. Arapahoe goes on to say that before the state court can determine the rights of Arapahoe under state law, a determination must be made as to what Arapahoe's rights are under the Natural Gas Act, and that this Commission, not the state courts in Texas, is best situated to make this determination.

Public notice of the application for relief was issued on June 5, 1978, publication in the Federal Register being on June 12, 1978 (43 FR 25369). On July 7, 1978, Colorado Interstate Gas Company (CIG) filed its Petition for Leave to Intervene Out of Time stating that the volumes of gas purchased by Panhandle from Arapahoe are, after processing sold and delivered by Panhandle to CIG, together with gas purchased by Panhandle from other producers in the area, and all comingled by CIG with its other gas supplies in Texas and transported or sold for resale in interstate commerce, and the relief requested, if granted, would have an effect upon CIG and upon its customers.

Discussion

It is clear that the Commission did not intend to exclude from coverage under a small producer certificate reserves acquired from a large producer prior to the issuance of Order No. 428 because the Commission specified in Order No. 428–B, mimeo pp 11–12:

"Finally, the blanket certificate authorization is applicable to jurisdictional sales made by a small producer from gas reserves acquired prior to the issuance of Order No. 428 by the purchase of developed reserves in place from a large producer. The problem sought to be solved in Section 157.40[c] by the exclusion from blanket authorization of sales from certain gas reserves has no applicability to previously acquired reserves. However, for acquisitions of developed reserves in place made on or after the issuance of Order No. 428, a small producer must apply for separate certificate authorization for jurisdictional sales relating thereto regardless of whether the large producer who sold the reserves in place retained any rights or reversionary interest in the properties involved."[2]

While the wording of Section 157.40(c), to the extent here relevant, was modified slightly in Opinion No. 742, in all material respects it remained the same as that promulgated in Order No. 428. Moreover, there is nothing in the text of Opinion No. 742 which would suggest that the Commission had any intention of modifying Section 157.40(c) in the fashion claimed by Panhandle.

Arapahoe has properly construed the Commission's intention with regard to the rate treatment to be applied to small producer sales from acquired large producer developed reserves. That is, small producers can receive a higher rate to the extent that the small producer acquired such reserves *before* the Commission established different rate treatment for small producer sales in Order No. 428 on March 18, 1971. Panhandle's interpretation would disqualify small producer rate treatment to all reserves developed by large producers irrespective of the date of small producer acquisition. This position is erroneous. Since Arapahoe acquired reserves developed by Gulf in 1969, well before the issuance of Order No. 428, it should be accorded small producer rate treatment to the extent contractually permitted.[3]

In view of the above, we do not reach Arapahoe's request for abandonment authority or other contingent avenues of relief.

In certain of its filings Panhandle has made allegations regarding certain communications between Arapahoe and members of our technical staff, which communications Panhandle has labeled as *ex parte*. We have inquired into the substance of and circumstances and timing surrounding the communications and find the allegations to be groundless.

We are gravely concerned with any suggestion that our processes are not fundamentally fair, and consequently we have explored this allegation thoroughly to determine if Panhandle suffered any prejudice whatsoever in this matter because of Arapahoe's communications.[4]

The facts are that a representative of Arapahoe talked on the telephone with two members of the staff of the Office of Pipeline and Producer Regulation on April 24, 1978. According the the staff members, the Arapahoe representative's questions related generally to the treatment accorded gas produced from small producers' wells where the wells had been developed by a large producer but sold to the small producer prior to the issuance of Order 428. The Commission staff members cited language from Order 428–B—specifically, the paragraph continuing from the bottom of 46 FPC 52 to the top of 53—as dispositive. Apparently, Arapahoe then advised Panhandle of its communication with our staff, and did so prior to Panhandle's filing on May 8 of its reply to Arapahoe's application.

Thus, the staff members concerned (who are not lawyers) simply referred Arapahoe to what they regarded to be the pertinent text of Federal Power Commission orders. In so doing, and in stating that the language from Order 428–B governed in this situation, they were merely voicing established Commission policy and practice, for the Commission had earlier dealt with situations that were identical on all pertinent facts.[5] Moreover, the two staff members did not appear before or advise the Commission in its deliberations on this matter.

In sum, we see no element of unfairness or prejudice to Panhandle arising out of the communications: Panhandle was given prompt disclosure of the communications, the staff members merely communicated established Commission policy, Panhandle had a full opportunity to respond, and did so, and the Commission's decision did not depend—indeed, was not at all influenced—by anything the staff members said which might in turn have been said by Arapahoe's representative in the two conversations with staff members.

The Commission finds:

(1) Arapahoe is entitled to small producer rate treatment with respect to

[2] Arapahoe has submitted a copy of its April 1, 1975, replacement contract with Panhandle which contains an area rate clause and appears to permit collection of the claimed rates.

[4] The inquiry went considerably beyond the technical question of compliance with our regulations. Under 18 C.F.R. 1.4(d), *ex parte* communications pertain to *Pending* proceedings. Here, the two communications took place on April 24, 1978, and Arapahoe's application was not filed until April 28, 1978. Thus, there was no violation of our regulations.

[5] *See*, Order issued June 10, 1976 in CS68–57, *et al.*, Appendix A, p. 2, n.13; as well as letters from Secretary dated March 11, 1977 to Texlan Oil Company, Inc., reply reference number DNG–231, and dated May 5, 1976 to Mr. Franklin E. Bernsen in Docket Nos. CS72–647 and CS76–548.

gas delivered to Panhandle on and after August 28, 1975, from the developed reserves acquired from Gulf in 1969.

(2) Participation in this proceeding by Colorado Interstate Gas Company may be in the public interest.

(3) Panhandle's allegations of ex parte communications are without merit and any requested relief based thereon should be denied.

The Commission orders:

(A) Arapahoe is entitled to small producer rate treatment with respect to gas delivered to Panhandle on and after August 28, 1975, from the developed reserves acquired from Gulf in 1969.

(B) CIG is hereby permitted to intervene in this proceeding subject to the rules and regulations of the Commission; *Provided, however,* that the participation of such intervenor shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene *Provided, further,* that the admission of such intervenor shall not be construed as recognition by the Commission that it might be aggrieved because of any order of the Commission entered in this docket.

(C) All other requests of the parties for relief are hereby denied.

By the Commission.

Lois D. Cashell,
Acting Secretary.

[Docket No. CI78-705]
[FR Doc. 12422 Filed 4-20-79; 8:45 am]
BILLING CODE 6450-01-M

El Paso Natural Gas Co., et al.; Notice of Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

April 12, 1979.

On April 4, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

New Mexico Oil Conservation Division

FERC Control Number: JD79-2517
API Well Number: 30045058640000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Huerfano Unit #141
Field: Basin-Dakota Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 13.0 MMcf.

FERC Control Number: JD79-2518
API Well Number: 30045086870000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Schultz Com E 10
Field: Aztec-Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 5.0 MMcf.

FERC Control Number: JD79-2519
API Well Number: 30039209380000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Lindrith Unit 81
Field: Blanco, South-Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 6.6 MMcf.

FERC Control Number: JD79-2520
API Well Number: 30039072590000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 28-5 Unit #53
Field: Blanco-Mesaverde Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 14.2 MMcf.

FERC Control Number: JD79-2521
API Well Number: 3004509399000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Morris A 7
Field: Aztec-Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 11.0 MMcf.

FERC Control Number: JD79-2522
API Well Number: 30045210290000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Elliott A 2
Field: Aztec-Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 19.7 MMcf.

FERC Control Number: JD79-2523
API Well Number: 30045206680000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Heaton 24
Field: Aztec-Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 17.5 MMcf.

FERC Control Number: JD79-2524
API Well Number: 30045220850000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Brookhaven Com L #14
Field: Blanco-Pictured Cliffs Gas
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 15.7 MMcf.

FERC Control Number: JD 79-2525
API Well Number: 30039208110000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: San Juan 2705 Unit #181
Field: Tapacito-Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 9.5 MMcf.

FERC Control Number: JD 79-2526
API Well Number: 30039206120000
Section of NGPA: 103
Operator: El Paso Natural Gas Company
Well Name: San Juan 27-5 Unit #153
Field: Tapacito-Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 15.0 MMcf.

FERC Control Number: JD 79-2527
API Well Number: 30039055540000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: Canyon Largo Unit #20
Field: Ballard-Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 8.4 MMcf.

FERC Control Number: JD 79-2528
API Well Number: 30039206700000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: San Juan 27-4 Unit #64
Field: Tapacito-Pictured Cliffs Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 8 MMcf.

FERC Control Number: JD 79-2529
API Well Number: 30039072600000
Section of NGPA: 108
Operator: El Paso Natural Gas Company
Well Name: SJ 28-5 Unit #52
Field: Blanco-Mesaverde Gas
County: Rio Arriba
Purchaser: El Paso Natural Gas Company
Volume: 10.0 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before May 8, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 79-12436 Filed 4-20-79; 8:45 am]
BILLING CODE 6450-01-M

Exxon Corp., et al.; Notice of Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

April 11, 1979.

On March 28, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

Railroad Commission of Texas

Oil and Gas Division

FERC Control Number: JD79-2261

API Well Number: 42-003-31614
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Means SA Unit No. 1376
Field: Means
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 1 MMcf.

FERC Control Number: JD79-2262
API Well Number: 42-103-31910
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: J. B. Tubb F-16U
Field: Sand Hills (Judkins)
County: Crane
Purchaser: El Paso Natural Gas Company
Volume: 76 MMcf.

FERC Control Number: JD79-2263
API Well Number: 42-003-31578
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Means SA Unit No. 1358
Field: Means
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 1 MMcf.

FERC Control Number: JD79-2264
API Well Number: 42-003-31613
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Means SA Unit No. 1354
Field: Means
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 1 MMcf.

FERC Control Number: JD79-2265
API Well Number: 42-003-31683
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Means SA Unit No. 1274
Field: Means
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 18 MMcf.

FERC Control Number: JD79-2266
API Well Number: 42-003-31682
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Means SA Unit No. 1260
Field: Means
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 2 MMcf.

FERC Control Number: JD79-2267
API Well Number: 42-003-31729
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Means SA Unit No. 1174
Field: Means
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 10 MMcf.

FERC Control Number: JD79-2268
API Well Number: 42-103-31846
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: J. B. Tubb A/C-1 Well No. 158U
Field: Sand Hills (Judkins)
County: Crane
Purchaser: El Paso Natural Gas Company
Volume: 39 MMcf.

FERC Control Number: JD79-2269
API Well Number: 42-003-31663
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Means SA Unit #2564
Field: Means
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 3 MMcf.

FERC Control Number: JD79-2270
API Well Number: 42-003-31663
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Means SA Unit #2470
Field: Means
County: Andrews
Purchaser: Phillips Petroleum Company
Volume:

FERC Control Number: JD79-2271
API Well Number: 42-003-31661
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Means SA Unit #2458
Field: Means
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 2 MMcf.

FERC Control Number: JD79-2272
API Well Number: 42-227-31667
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Douthit Unit 707
Field: Howard Glassock
County: Howard
Purchaser: Phillips Petroleum Company
Volume: 0.1 MMcf.

FERC Control Number: JD79-2273
API Well Number: 42-003-31912
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: J. B. Tubb A/C 1 Well 167U
Field: Sand Hills (Judkins)
County: Crane
Purchaser: El Paso Natural Gas Company
Volume: 6 MMcf.

FERC Control Number: JD79-2274
API Well Number: 42-003-31573
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Means SA Unit #2966
Field: Means
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 2 MMcf.

FERC Control Number: JD79-2275
API Well Number: 42-003-31542
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Means SA Unit #2860
Field: Means
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 1 MMcf

FERC Control Number: JD79-2276
API Well Number: 42-003-31696
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Means SA Unit #2760
Field: Means
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: L MMcf.

FERC Control Number: JD79-2277
API Well Number: 42-003-31904
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Judkins Gas Unit #2, Well #2
Field: Sand Hills (Judkins)
County: Crane
Purchaser: El Paso Natural Gas Company
Volume: 153 MMcf.

FERC Control Number: JD79-2278
API Well Number: 42-131-32533
Section of NGPA: 103
Operator: Mobil Oil Corporation
Well Name: Duval Ranch Sec. 80 #9
Field: DCR-79
County: Duval
Purchaser: Natural Gas Pipeline Co. of America
Volume: 328 MMcf.

FERC Control Number: JD79-2279
API Well Number: 42-103-31746
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: J. B. Tubb A/C-1 Well #132U
Field: Sand Hills (Judkins)
County: Crane
Purchaser: El Paso Natural Gas Company
Volume: 26 MMcf.

FERC Control Number: JD79-2280
API Well Number: 42-219-32323
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: W. A. Coons, Well #31
Field: Kingdom (ABO Reef)
County: Hockley
Purchaser: Amoco Production Company
Volume: 2 MMcf.

FERC Control Number: JD79-2281
API Well Number: 42-445-30577
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: W. A. Coons, Well #25
Field: Kingdom (ABO Reef)
County: Terry
Purchaser: Amoco Production Company
Volume: 2 MMcf.

FERC Control Number: JD79-2284
API Well Number: 42-103-31510
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: J. B. Tubb A/C-1 Well #130U
Field: Sand Hills (Judkins)
County: Crane
Purchaser: El Paso Natural Gas Company
Volume: 70 MMcf.

FERC Control Number: JD79-2285
API Well Number: 42-103-31912
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: J. B. Tubb A/C-1 Well #167L
Field: Sand Hills (Tubb)
County: Crane
Purchaser: El Paso Natural Gas Company
Volume: 2 MMcf.

FERC Control Number: JD79-2286
API Well Number: 42-219-32414
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: W. A. Coons, Well #35
Field: Kingdom (ABO Reef)
County: Hockley
Purchaser: Amoco Production Company
Volume: 9 MMcf.

FERC Control Number: JD79-2287
API Well Number: 42-103-31860
Section of NGPA: 103
Operator: Exxon Corporation

Well Name: J. B. Tubb A/C-1 Well #159U
Field: Sand Hills (McKnight)
County: Crane
Purchaser: El Paso Natural Gas Company
Volume: 263 MMcf.

FERC Control Number: JD79-2288
API Well Number: 42-003-31143
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Fullerton Clearfork Unit #1137
Field: Fullerton
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 21 MMcf.

FERC Control Number: JD79-2289
API Well Number: 42-003-31574
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Fullerton Clearfork Unit #1333
Field: Fullerton
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 15 MMcf.

FERC Control Number: JD79-2290
API Well Number: 42-003-31140
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Fullerton Clearfork Unit #1945
Field: Fullerton
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 38 MMcf.

FERC Control Number: JD79-2291
API Well Number: 42-44503-581
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: W. A. Coons, Well #33
Field: Kingdom (ABO Reef)
County: Terry
Purchaser: Amoco Production Company
Volume: 2 MMcf.

FERC Control Number: JD79-2292
API Well Number: 42-219-32327
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: W. A. Coons, Well #34
Field: Slaughter
County: Hockley
Purchaser: Amoco Production Company
Volume: 10 MMcf.

FERC Control Number: JD79-2293
API Well Number: 42-103-31748
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: J. B. Tubb A/C-1 Well #135U
Field: Sand Hills (Judkins)
County: Crane
Purchaser: El Paso Natural Gas Company
Volume: 81 MMcf.

FERC Control Number: JD79-2294
API Well Number: 42-003-31546
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Fullerton Clearfork Unit #993
Field: Fullerton
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 17 MMcf.

FERC Control Number: JD79-2295
API Well Number: 42-003-31545
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Fullerton Clearfork Unit #835
Field: Fullerton
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 12 MMcf.

FERC Control Number: JD79-2296
API Well Number: 42-003-31756
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Fullerton Clearfork Unit #1933
Field: Fullerton
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 10 MMcf.

FERC Control Number: JD79-2297
API Well Number: 42-003-31644
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Fullerton Clearfork Unit #2221
Field: Fullerton
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 1 MMcf.

FERC Control Number: JD79-2298
API Well Number: 42-003-31643
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Fullerton Clearfork Unit #2427
Field: Fullerton
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 2 MMcf.

FERC Control Number: JD79-2299
API Well Number: 42-003-31718
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Fullerton Clearfork Unit #4417
Field: Fullerton
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 19 MMcf.

FERC Control Number: JD79-2300
API Well Number: 42-003-31646
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Fullerton Clearfork Unit #1239
Field: Fullerton
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 13 MMcf.

FERC Control Number: JD79-2301
API Well Number: 42-003-31144
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Fullerton Clearfork Unit #1433
Field: Fullerton
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 20 MMcf.

FERC Control Number: JD79-2302
API Well Number: 42-003-31717
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Fullerton Clearfork Unit #4217
Field: Fullerton
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 30 MMcf.

FERC Control Number: JD79-20303
API Well Number: 42-003-31716
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Fullerton Clearfork Unit #927
Field: Fullerton
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 8 MMcf.

FERC Control Number: JD79-2304
API Well Number: 42-003-31553
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Fullerton Clearfork Unit #2243
Field: Fullerton
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 15 MMcf.

FERC Control Number: JD79-2305
API Well Number: 42-003-31552
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Fullerton Clearfork Unit #2035
Field: Fullerton
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 31 MMcf.

FERC Control Number: JD79-2306
API Well Number: 42-003-31138
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Fullerton Clearfork Unit #1737
Field: Fullerton
County: Andrews
Purchaser: Phillips Petroleum Company
Volume: 1 MMcf.

FERC Control Number: JD79-2307
API Well Number: 42-103-31750
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: J. B. Tubb A/C-1 Well #134U
Field: Sand Hills (McKnight)
County: Crane
Purchaser: El Paso Natural Gas Company
Volume: 28 MMcf.

FERC Control Number: JD79-2308
API Well Number: 42-103-31766
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: J. B. Tubb A/C-1 Well #138
Field: Sand Hills (McKnight)
County: Crane
Purchaser: El Paso Natural Gas Company
Volume: 44 MMcf.

FERC Control Number: JD79-2309
API Well Number: 42-295-30304
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Mrs. Lutie W. Gex #2
Field: Mammoth Creek, North (Cleveland)
County: Lipscomb
Purchaser: Transwestern Pipeline Company
Volume: 403 MMcf.

FERC Control Number: JD79-2310
API Well Number: 42-295-30519
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Schultz Bros. "E" #2
Field: Mammoth Creek, North (Cleveland)
County: Lipscomb
Purchaser: Transwestern Pipeline Company
Volume: 591 MMcf.

FERC Control Number: JD79-2311
API Well Number: 42-295-30520
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Schultz Bros. "E" #3
Field: Mammoth Creek, North (Cleveland)
County: Lipscomb

Purchaser: Trsanwestern Pipeline Company
Volume: 912 MMcf.

FERC Control Number: JD79-2353
API Well Number: 42-165-30674
Section of NGPA: 103
OperatorPERATOR: Exxon Corporation
Well Name: Robertson (Clfk) Unit, Well #8002
Field: Robertson N. (Clearfork 7100)
County: Gaines
Purchaser: Phillips Petroleum Co.
Volume: 5 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before May 8, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 79-12433 Filed 4-20-79; 8:45 am]
BILLING CODE 6450-01-M

Getty Oil Co.; Notice of Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

April 12, 1979.

On April 9, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

New Mexico Oil Conservation Division

FERC Control Number: JD 79-2599
API Well Number: 30-045-2311800
Section of NGPA: 103
Operator: Getty Oil Company
Well Name: E. M. Hartman No. 1
Field: Bloomfield Chacra
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 40 MMcf.

FERC Control Number: JD 79-2600
API Well Number: 30-045-2312000
Section of NGPA: 103
Operator: Getty Oil Company
Well Name: Mae Gale "A" No. 1
Field: Bloomfield Chacra
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 36 MMcf.

FERC Control Number: JD 79-2601
API Well Number: 30-045-2311900
Section of NGPA: 103
Operator: Getty Oil Company
Well Name: Ward "A" No. 1
Field: Bloomfield Chacra
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 36 MMcf.

FERC Control Number: JD 79-2602
API Well Number: 30-045-2311500
Section of NGPA: 103
Operator: Getty Oil Company
Well Name: Garrett "B" No. 1
Field: Bloomfield Chacra
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 24 MMcf.

FERC Control Number: JD 79-2603
API Well Number: 30-045-2308900
Section of NGPA: 103
Operator: Getty Oil Company
Well Name: Garrett "A" No. 1
Field: Bloomfield Chacra
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 18 MMcf.

FERC Control Number: JD 79-2604
API Well Number: 30-045-2311700
Section of NGPA: 103
Operator: Getty Oil Company
Well Name: Garrett "D" No. 1
Field: Bloomfield Chacra
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 36 MMcf.

FERC Control Number: JD 79-2605
API Well Number: 30-045-231120
Section of NGPA: 103
Operator: Getty Oil Company
Well Name: Hanley "B" No. 1-L
Field: Undesignated Mesaverde
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 60 MMcf.

FERC Control Number: JD 79-2606
API Well Number: 30-045-2311200
Section of NGPA: 103
Operator: Getty Oil Company
Well Name: Hanley "B" No. 1-U
Field: Bloomfield Chacra
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 36 MMcf.

FERC Control Number: JD 79-2607
API Well Number: 30-045-2305900
Section of NGPA: 103
Operator: Getty Oil Company
Well Name: Hanley "A" No. 1-U
Field: Bloomfield Chacra
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 36 MMcf.

FERC Control Number: JD 79-2608
API Well Number: 30-045-2305900
Section of NGPA: 103
Operator: Getty Oil Company
Well Name: Hanley "A" No. 1-L
Field: Undesignated MV
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 36 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before May 8, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 79-12438 Filed 4-20-79; 8:45 am]
BILLING CODE 6450-01-M

Gulf Oil Corp., et al.; Notice of Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

April 12, 1979.

On April 2, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

New Mexico Oil Conservation Division

FERC Control Number: JD79-2530
API Well Number: 30-025-25545
Section of NGPA: 103
Operator: Gulf Oil Corporation
Well Name: Central Drinkard Unit Well No. 417
Field: Drinkard
County: Lea
Purchaser: El Paso Natural Gas Company
Volume: 14 MMcf.

FERC Control Number: JD79-2531
API Well Number: 30-025-25694
Section of NGPA: 103
Operator: Gulf Oil Corporation
Well Name: Central Drinkard Unit Well No. 419
Field: Drinkard
County: Lea
Purchaser: El Paso Natural Gas Company
Volume: 84 MMcf.

FERC Control Number: JD79-2532
API Well Number: 39-015-22307
Section of NGPA: 102
Operator: Mesa Petroleum Co.
Well Name: Bogle State Com #1
Field: Undesignated
County: Eddy
Purchaser: Northern Natural Gas Company
Volume:

FERC Control Number: JD79-2533
API Well Number: 30-045-0991800
Section of NGPA: 108
Operator: Horace F. McKay, Jr.
Well Name: Maxwell 1
Field: Aztec Pictured Cliff
County: San Juan

Purchaser: El Paso Natural Gas Co.
Volume: 13.2 MMcf.

FERC Control Number: JD79-2534
API Well Number: 30-045-0806500
Section of NGPA: 108
Operator: Horace F. McKay, Jr.
Well Name: Bearden 1
Field: Aztec-Fruitland
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 14 MMcf.

FERC Control Number: JD79-2535
API Well Number: 30-045-0800800
Section of NGPA: 108
Operator: Horace F. McKay, Jr.
Well Name: Sanchez 1
Field: Aztec-Fruitland
County: San Juan
Purchaser: El Paso Natural Gas Company
Volume: 12 MMcf..

FERC Control Number: JD79-2536
API Well Number: 30-045-0786600
Section of NGPA: 108
Operator: Horace F. McKay, Jr.
Well Name: Sullivan 3
Field: Aztec-Pictured Cliff
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 8.4 MMcf.

FERC Control Number: JD79-2537
API Well Number: 30-045-0980800
Section of NGPA: 108
Operator: Horace F. McKay, Jr.
Well Name: Uptegrove 1
Field: Aztec-Pictured Cliff
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume:

FERC Control Number: JD79-2538
API Well Number:
Section of NGPA: 108
Operator: Beta Development Co.
Well Name: Charles Hutton #1
Field: Basin Dakota
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 20 MMcf.

FERC Control Number: JD79-2539
API Well Number:
Section of NGPA: 108
Operator: Beta Development Co.
Well Name: Fifield Federal #1
Field: Basin Dakota
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 8 MMcf.

FERC Control Number: JD79-2540
API Well Number:
Section of NGPA: 108
Operator: Beta Development Co.
Well Name: Jose Jaquez #1
Field: Basin Dakota
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 3 MMcf.

FERC Control Number: JD79-2541
API Well Number:
Section of NGPA: 108
Operator: Beta Development Co.
Well Name: Paul Palmer "D" #1
Field: Basin Dakota
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 4 MMcf.

FERC Control Number: JD79-2542
API Well Number:
Section of NGPA: 108
Operator: Beta Development Co.
Well Name: Katherine Pierce
Field: Basin Dakota
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 5 MMcf.

FERC Control Number: JD79-2543
API Well Number:
Section of NGPA: 108
Operator: Beta Development Co.
Well Name: Kate Standage
Field: Basin Dakota
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 16 MMcf.

FERC Control Number: JD79-2544
API Well Number:
Section of NGPA: 108
Operator: Beta Development Co.
Well Name: James Scott #1
Field: Basin Dakota
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 18 MMcf.

FERC Control Number: JD79-2545
API Well Number:
Section of NGPA: 108
Operator: Bradley H. Keyes
Well Name: Ransom #1
Field: Aztec Fruitland
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 16 MMcf.

FERC Control Number: JD79-2546
API Well Number:
Section of NGPA: 108
Operator: Bradley H. Keyes
Well Name: Price #1
Field: Aztec Pictured Cliffs
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 5 MMcf.

FERC Control Number: JD79-2547
API Well Number:
Section of NGPA: 108
Operator: Bradley H. Keyes
Well Name: Brimhall #1
Field: Aztec Pictured Cliffs
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 5 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before May 8, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 79-12437 Filed 4-20-79; 8:45 am]

BILLING CODE 6450-01-M

Gulf Energy & Development Corp.; Notice of Application

April 13, 1979.

Take notice that on March 23, 1979, Gulf Energy & Development Corporation (Applicant), P.O. Box 17349, San Antonio, Texas 78217, filed in Docket No. CP79-236 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities and services in Zapata and Starr Counties, Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to an agreement between Applicant and Tennessee Gas Pipeline Company, a division of Tenneco Inc. (Tennessee), it is stated that Applicant gathers natural gas that has been purchased by Tennessee from numerous gas producers in Zapata and Starr Counties. Applicant redelivers the gas to Tennessee at the terminus of the subject system, it is stated. It is also stated that Tennessee, which pays Applicant a gathering charge for this service, then transports the gas in interstate commerce.

Applicant states that compliance with applicable Commission regulations would be accomplished more efficiently and economically if the gathering system and related operations were segregated from Applicant's non-jurisdictional facilities and operations. Applicant, therefore, requests authorization to abandon the aforementioned gas gathering service on account of the sale and transfer of such service to Zapata Gathering Company (Zapata), a wholly owned subsidiary of Applicant which owns no non-jurisdictional facilities. Zapata has made application to the Commission for authorization to acquire and update the pipeline gathering system Applicant desires to abandon, it is stated.

Applicant indicates that the facilities to be abandoned include approximately 129 miles of pipeline in Zapata and Starr Counties, Texas, ranging in diameter from 2⅞-inches to 16-inches and extending from several fields in both counties to a delivery point connecting with the existing gas pipeline of Tennessee, in the Zim Field area of Starr County, Texas.

It is stated that Applicant would sell and transfer the gathering system to Zapata at the system's net book value as

reflected on Applicant's books as of December 31, 1978. Applicant states that the net book value of the system is not presently know as the 1978 year-end audit has not yet been completed. Applicant also states that the net book value of the system as of December 31, 1977, was $4,132,386. It is indicated that Applicant proposes to make a capital contribution to Zapata to the extent of 49 percent of the net book value. The proposed transfer would create a debt owed by Zapata to Applicant, to the extent of the remaining 51 percent of the net book value, it is stated. Applicant states the debt created by the transfer would be evidenced by a note executed by Zapata payable to Applicant in 13 months and bearing interest at 125 percent of the prime interest rate with quarterly adjustments being made to compensate for fluctuations in the prime rate.

Applicant indicates that Zapata would adopt Applicant's FERC Gas Rate Schedule No. 1 and would assume responsibility for all pending rate matters relating to the subject system. Applicant has perfected an appeal to the United States Court of Appeals for the District of Columbia from the Commission order entered in Rate Docket No. RP74-86, it is stated. Applicant states the eventual determination of this appeal would also affect the settlement reached by Applicant and the Commission in Rate Docket No. RP76-97. Zapata would assume responsibility for any refund obligations that result from the pending appeal, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 9, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,
Acting Secretary.

[Docket No. CP79-236]
[FR Doc. 79-12423 Filed 4-20-79; 8:45 am]
BILLING CODE 6450-01-M

Gulf Oil Corp., et. al; Notice of Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

April 12, 1979.

On April 4, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Louisiana

Department of Natural Resources, Office of Conservation

FERC Control Number: JD79-2442
API Well Number: 17-013-20332
Section of NGPA: 103
Operator: Gulf Oil Corporation
Well Name: Conly Enterprises, Inc. Well No. 1 SN-155786
Field: Woodardville
County: Bienville
Purchaser: Southern Natural Gas Company
Volume: 200 MMcf.

FERC Control Number: JD79-2443
API Well Number: 1706721122
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta A #13
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 15.25 MMcf.

FERC Control Number: JD79-2444
API Well Number: 17-119-20188
Section of NGPA: 103
Operator: General American Oil Company of Texas
Well Name: Pardee Calloway #2
Field: Ivan
County: Webster
Purchaser: Arkansas Louisiana Gas Co.
Volume: 250 MMcf.

FERC Control Number: JD79-2445
API Well Number: 17067221121
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta C #8
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 15.25 MMcf.

FERC Control Number: JD79-2446
API Well Number: 1706721125
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta C #9
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 15.25 MMcf.

FERC Control Number: JD79-2447
API Well Number: 1706721167
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta C #10
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 15.25 MMcf.

FERC Control Number: JD79-2448
API Well Number: 17067221254
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta C #19
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 15.20 MMcf.

FERC Control Number: JD79-2449
API Well Number: 1706721088
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta B #4
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 18.43 MMcf.

FERC Control Number: JD79-2450
API Well Number: 17067221089
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta B #5
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 18.43 MMcf.

FERC Control Number: JD79-2451
API Well Number: 1706721104
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta B #6
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 18.43 MMcf.

FERC Control Number: JD79-2452
API Well Number: 1706721084
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta B #9
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 18.43 MMcf.

FERC Control Number: JD79-2453

API Well Number: 1706721106
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta B #10
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 18.43 MMcf.

FERC Control Number: JD79-2454
API Well Number: 1076721107
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta C #1
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 15.25 MMcf.

FERC Control Number: JD79-2455
API Well Number: 1706721108
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta C #2
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline Volume: 15.25 MMcf.

FERC Control Number: JD79-2456
API Well Number: 1706721109
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta C #3
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline Volume: 15.25 MMcf.

FERC Control Number: JD79-2457
API Well Number: 1706721126
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta A #16
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas pipeline Volume: 15.25 MMcf.

FERC Control Number: JD79-2458
API Well Number: 1706721127
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta A #17
Field: Monroe Gas
County: Morehous
Purchaser: United Gas Pipeline Volume: 15.25 MMcf.

FERC Control Number: JD79-2459
API Well Number: 171072063
Section of NGPA: 103
Operator: Crystal Oil Company
Well Name: Chicago Mill A 2
Field: westwood
County: Tensas
Purchaser: Columbia Gas Transmission Corp.
Volume: 9 MMcf.

FERC Control Number: JD79-2460
API Well Number: 1700720224
Section of NGPA: 103
Operator: Crystal Oil Company
Well Name: Ayers Land & Timber 4
Field: Westwood
County: Tensas
Purchaser: Columbia Gas Transmission Corp.
Volume: 40 MMcf.

FERC Control Number: JD79-2461
API Well Number: 1711100475
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Booth #A-1
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 3.8 MMcf.

FERC Control Number: JD79-2462
API Well Number:
Section of NGPA: 108
Operator: IMX Exploration Company
Well Name: Briggs #2
Field: Monroe Gas
County: Ouachaita
Purchaser: Mid Louisiana Gas Company
Volume: 4.3 MMcf.

FERC Control Number: JD79-2463
API Well Number:
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Briggs #3
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Gas Company
Volume: 5.1 MMcf.

FERC Control Number: JD79-2464
API Well Number:
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Briggs #5
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Gas Company
Volume: 5.1 MMcf.

FERC Control Number: JD79-2465
API Well Number:
Section of NGPA: 108
Operator: IMC Exploration
Well Name: Briggs #7
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Gas Company
Volume: 6.3 MMcf.

FERC Control Number: JD79-2466
API Well Number: 1711100274
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling Lbr. #46
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 11.3 MMcf.

FERC Control Number: JD79-2467
API Well Number: 1710720222
Section of NGPA: 103
Operator: Crystal Oil Company
Well Name: Ayers Land & Timber 3
Field: Westwood
County: Tensas
Purchaser: Columbia Gas Transmission Corp.
Volume: 40 MMcf.

FERC Control Number: JD79-2468
API Well Number: 1710720242
Section of NGPA: 103
Operator: Crystal Oil Company
Well Name: Crystal Alcorn Donald 1
Field: Westwood
County: Tensas
Purchaser: Columbia Gas Transmission Corp.
Volume: 5 MMcf.

FERC Control Number: JD79-2469
API Well Number:
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Central Immigration #27
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Volume: 2.0 MMcf.

FERC Control Number: JD79-2470
API Well Number:
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Central Immigration #23
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Gas Company
Volume: 1.3MMcf.

FERC Control Number: JD79-2471
API Well Number: 1706721148
Section of NGPA: 103
Operator: Nip N' Tuck Minerals, Inc.
Well Name: Pipes #1
Field: Monroe
County: Morehouse
Purchaser: Louisiana Gas Service Co.
Volume: 100 MMcf.

FERC Control Number: JD79-2472
API Well Number: 1706721180
Section of NGPA: 103
Operator: Nip N' Tuck Minerals, Inc.
Well Name: Pipes #2
Field: Monroe
County: Morehouse
Purchaser: Louisiana Gas Service Co.
Volume: 100 MMcf.

FERC Control Number: JD79-2476
API Well Number: 1706721180
Section of NGPA: 103
Operator: Nip N' Tuck Minerals, Inc.
Well Name: Pipes #2-D
Field: Monroe
County: Morehouse
Purchaser: Louisiana Gas Service Co.
Volume: 100 MMcf.

FERC Control Number: JD79-2477
API Well Number: 1704920107
Section of NGPA: 103
Operator: Munoco Company
Well Name: S. A. Walsworth Hoss. S.U."Y"
Field: Northeast Hodge
County: Jackson
Purchaser: Continental Group, Inc.
Volume: 365 MMcf.

FERC Control Number: JD79-2478
API Well Number: 17113206420000
Section of NGPA: 103
Operator: Gulf Oil Corporation
Well Name: State Lease 3306 Well No. 9
Field: Redfish Point
County: Vermillion
Purchaser: Michigan Wisconsin
Volume: 200 MMcf.

FERC Control Number: JD79-2379
API Well Number: 17-001-20626
Section of NGPA: 103
Operator: Hassie Hunt Exploration Company
Well Name: Rufus Reed #1
Field: Maxie (3rd Sd Nonian Strunua)
County: Acadia
Purchaser: Texas Gas Transmission Corp.
Volume: 75 MMcf.

FERC Control Number: JD79-2480
API Well Number: 1704520482
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Petit Anse Co. No. 64

Field: Avery Island
County: Iberia
Purchaser: Columbia Gas Trans. Corp.
Volume: 18 MMcf.

FERC Control Number: JD79-2481
API Well Number: 1711320802
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Exxon Fee-Pecan Island No. 61
Field: Pecan Island
County: Vermillion
Purchaser: Columbia Gas Trans. Corp.
Volume: 5400 MMcf.

FERC Control Number: JD79-2482
API Well Number: 1711320820
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: Exxon Fee-Pecan Island No. 51
Field: Pecan Island
County: Vermillion
Purchaser: Columbia Gas Trans. Corp.
Volume: 1825 MMcf.

FERC Control Number: JD79-2483
API Well Number: 1709320158
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: MA-1 RB SUC; S.L 560, No. 6
Field: College Point-St. James
County: St. James
Purchaser: United Gas Pipe Line Co.
Volume: 274 MMcf.

FERC Control Number: JD79-2484
API Well Number: 1711101660
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling Lbr. #14
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 10.6 MMcf.

FERC Control Number: JD79-2485
API Well Number: 1711101601
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling Lbr. #12
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 10.6 MMcf.

FERC Control Number: JD79-2486
API Well Number: 1700120728
Section of NGPA: 103
Operator: Henry Goodrich, d/b/a Goodrich Oil Co.
Well Name: NS RA SUB; A. T. Jagneaux #1.
Field: Branch
County: Acadia
Purchaser: United Gas Pipe Line Company
Volume: 600 MMcf.

FERC Control Number: JD79-2487
API Well Number: 1711101683
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayline Lbr. #10
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 5.8 MMcf.

FERC Control Number; JD79-2488
API Well Number:
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Central Immigration #41
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Gas Company
Volume: 3.0 MMcf.

FERC Control Number; JD79-2489
API Well Number:
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Central Immigration #34
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Gas Company
Volume: 12.1 MMcf.

FERC Control Number; JD79-2490
API Well Number:
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Central Immigration #30
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Gas Company
Volume: 5.4 MMcf.

FERC Control Number; JD79-2491
API Well Number: 1707300609
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Central Immig.#55-HSU#832
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Gas Company
Volume: 9.9 MMcf.

FERC Control Number; JD79-2492
API Well Number: 1707300082
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Central Immigration #53
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Gas Company
Volume: 4.2 MMcf.

FERC Control Number; JD79-2493
API Well Number:
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Central Immigration #48
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Gas Company
Volume: 1.4 MMcf.

FERC Control Number; JD79-2494
API Well Number:
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Central Immigration #46
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Gas Company
Volume: 4.2 MMcf.

FERC Control Number; JD79-2495
API Well Number:
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Central Immigration #44
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Gas Company
Volume: 2.9 MMcf.

FERC Control Number; JD79-2496
API Well Number:
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling Lbr. #3
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 7.3 MMcf.

FERC Control Number; JD79-2497
API Well Number: 1707300071
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Cole #3
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Gas Company
Volume: 6.5 MMcf.

FERC Control Number; JD79-2498
API Well Number:
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Cole #2
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Gas Company
Volume: 5.5 MMcf.

FERC Control Number; JD79-2499
API Well Number: 1707320073
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Central Immig. #F-74
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Gas Company
Volume: 2.7 MMcf.

FERC Control Number; JD79-2500
API Well Number: 1707320067
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Central Immig. #F-69
Field: Monroe Gas
County: Ouachita
Purchaser: Mid Louisiana Gas Company
Volume: 1.6 MMcf.

FERC Control Number; JD79-2501
API Well Number: 1702321155
Section of NGPA: 103
Operator: Exxon Corporation
Well Name; K B Hanszen No. 19
Field: Chalkley
County: Cameron
Purchaser: Texas Gas Trans. Corp.
Volume: 72 MMcf.

FERC Control Number; JD79-2502
API Well Number: 1706721207
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta E#6
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 18.25 MMcf.

FERC Control Number; JD79-2503
API Well Number: 1706721221
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta D#4
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 3.86 MMcf.

FERC Control Number: JD79-2504
API Well Number: 1706721220
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta D#13
Field: Monroe Gas
County: Morehouse

Purchaser: United Gas Pipeline
Volume: 3.86 MMcf.

FERC Control Number: JD79-2505
API Well Number: 1706721205
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta E#4
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 18.43 MMcf.

FERC Control Number: JD79-2506
API Well Number: 1706721206
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta E#5
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 18.40 MMcf.

FERC Control Number: JD79-2507
API Well Number: 1706721208
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta E#7
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 18.25 MMcf.

FERC Control Number: JD79-2508
API Well Number: 1706721228
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta E#8
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 18.25 MMcf.

FERC Control Number: JD79-2509
API Well Number: 1706721229
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta E#9
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 18.25 MMcf.

FERC Control Number: JD79-2510
API Well Number: 1706721239
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta E#11
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 18.25 MMcf.

FERC Control Number: JD79-2512
API Well Number: 1706721251
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta E#25
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 18.25 MMcf.

FERC Control Number: JD79-2513
API Well Number: 1706721110
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta C#4
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 15.25 MMcf.

FERC Control Number: JD79-2514
API Well Number: 1706721114
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta C#5
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 15.25 MMcf.

FERC Control Number: JD79-2515
API Well Number: 1706721119
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta C#6
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 15.25 MMcf.

FERC Control Number: JD79-2516
API Well Number: 1706721120
Section of NGPA: 103
Operator: Primos Production Co.
Well Name: Tensas Delta C#7
Field: Monroe Gas
County: Morehouse
Purchaser: United Gas Pipeline
Volume: 15.25 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before May 8, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Lois D. Cashell,
Acting Secretary.

[FR Doc. 79-12434 Filed 4-20-79; 8:45 am]
BILLING CODE 6450-01-M

Herman Lang (Herman Lang & Raymond Brown d/b/a L & B Oil & Gas Company, et al.); Notice of Applications for "Small Producer" Certificates [1]

April 12, 1979.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 10 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before April 20, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission in its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Lois D. Cashell,
Acting Secretary.

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No.	Date filed	Applicant
CS71-181 (CS79-336)	2/22/79 [1]	Herman Lang (Herman Lang & Raymond Brown d/b/a/ L & B Oil & Gas Company), 625 N. 11th, Garden City, Kans. 67846.
CS71-181 (CS79-336)	2/22/79 [2]	Herman Lang, 625 N. 11th, Garden City, Kans. 67846.
CS71-208	3/13/79 [3]	Santa Fe Energy Company (Chanslor-Western Oil & Development Company), First City Natl. Bank Bldg., Houston, Tex. 77002.
CS73-392	2/26/79 [4]	Premier Resources Ltd. (Zoller & Danneberg, Inc. and Zoller & Danneberg Exploration), Suite 2100, First of Denver Plaza, 633-17th Street, Denver, Colo. 80202.
CS79-319	3/5/79	Blanco Oil Company, 904 American Tower, Shreveport, La. 71101.
CS79-320	3/5/79	Dew Oil & Gas Company, Inc., 305 Baronne Street, Suite 707, New Orleans, La. 70112.
CS79-340	2/28/79	King Ranch, Inc., P.O. Box 2446, Corpus Christi, Tex. 78403.
CS79-341	2/26/79	C. Curtis Reese, 724 Johnson Bldg., Shreveport, La. 71101.
CS79-342	2/26/79	Robert H. Cole, 10110 Chevy Chase Drive, Houston, Tex. 77042.
CS79-343	2/26/79	A. L. Parker, 917 N. Harrision Ave., Sherman, Tex. 75090.
CS79-344	2/26/79	Dwight Leonard, Box 925, Beaver, Okla. 73932.
CS79-345	3/1/79	Veva Jean Gibbard, P.O. Box 436, Sulphur, Okla. 73086.
CS79-346	3/2/79	Fitkin 1978 Drilling Fund, Ltd., Suite 200, Hightower Bldg., Oklahoma City, Okla. 73102.
CS79-347	3/2/79	Ogden Oil Company, Inc., 256 North Belt East, Suite 246, Houston, Tex. 77060.
CS79-348	3/2/79	Kristin L. Perryman, 700 Bank & Trust Tower, B&T, Box 113, Corpus Christi, Tex. 78477.
CS79-349	3/1/79	Fitkin 1977-W Drilling Fund, Ltd., Suite 200, Hightower Bldg., Oklahoma City, Okla. 73102.
CS79-350	3/1/79	Fitkin 1977 Drilling Fund, Ltd., Suite 200, Hightower Bldg., Oklahoma City, Okla. 73102.
CS79-351	3/1/79	Fitkin 1977-H Drilling Fund, Ltd., Suite 200, Hightower Bldg., Oklahoma City, Okla. 73102.
CS79-352	3/2/79	PALMCO Management Company, E-105 Petroleum Center, 900 N.E. Loop 410, San Antonio, Tex. 78209.
CS79-353	3/2/79	J. M. Jackson Oil Properties, Box 751, Oklahoma City, Okla. 73101.
CS79-354	3/5/79	Arthur J. Ferguson, P.O. Box 5433, Shreveport, La. 71105.
CS79-355	3/7/79	S.M.N. Ventures, R.R. #2, Box 104, Beaver, Okla. 73932.
CS79-356	3/6/79	Morton A. Cohn, 2000 West Loop South, Suite 1990, Houston, Tex. 77027.
CS79-357	3/12/79	Charles J. Heringer, Jr., P.O. Box 486, Billings, Mont. 59103.
CS79-358	3/12/79	Ken Petroleum Corporation, 4815 Republic Natl. Bank Tower, Dallas, Tex. 75201.
CS79-359	3/12/79	Cleroy Inc., 530 Beacon Bldg., Tulsa, Okla. 74103.
CS79-360	3/12/79	Lanroy Inc., 530 Beacon Bldg., Tulsa, Okla. 74103.
CS79-361	4/9/79	Eastern American Energy Corporation, P.O. Box N, Glenville, W. Va. 26351.
CS79-362	3/13/79	Gomaco, Inc., 415 S. Boston, Suite 600, Tulsa, Okla. 74103.
CS79-363	3/14/79	Eagle Oil & Gas Co., 510 Hamilton Bldg., Wichita Falls, Tex. 76301.
CS79-364	3/14/79	Godfrey & Riley, P.O. Box 2411, Monroe, La. 71207.

[1] By application filed 2-22-79, erroneously assigned Docket No. CS79-336, Herman Lang requests that the small producer certificate issued in Docket No. CS71-181 be redesignated to reflect dissolution of the partnership which assets are now owned by Herman Lang.

[2] By application filed 2-22-79, erroneously assigned Docket No. CS79-336, and Herman Lang also requests that sales made under the listed rate schedules and certificates, reflecting developed reserves acquired from large producers, be covered under his small producer certificate subject to large producer rates.

[3] Chanslor-Western Oil & Development Company and certain of its affiliates have been merged into an entity designated Santa Fe Energy Company and therefore, Chanslor-Western Oil & Development Company is requesting the name on small producer certificate, Docket No. CS71-208 be changed to Santa Fe Energy Company.

[4] Being renoticed to reflect a corporate name change from Zoller & Danneberg, Inc., and Zoller & Danneberg Exploration to Premier Resources, Ltd.

[Docket Nos. CS71-181, et al.]
[FR Doc. 79-12420 Filed 4-20-79; 8:45 am]
BILLING CODE 6450-01-M

Illinois Power Co.; Notice of Filing New Connection Point

April 16, 1979.

The filing company submits the following:

Take notice that Illinois Power Company ("IP" or "Illinois Power") on April 12, 1979 tendered for filing one additional connection point to be included in Appendix A of the Interconnection Agreement between Central Illinois Public Service Company ("CIPS"), Union Electric Company ("UE") and Illinois Power. The new connection point, identified as CIPS-IP Connection Point 37—Blue Mound, provides for a new 138 kv connection point. This connection point provides for a new 138 kv connection between the IP Mt. Auburn Shell Oil Substation and the CIPS Explorer Pipeline Substation necessary to provide electric service to a new Shell Oil Company pumping station.

A copy of this filing has been served upon CIPS and UE by mailing a copy, postage prepaid. In addition, Connection 37 has been filed with the Illinois Commerce Commission, Springfield, Illinois.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 8, 1979.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[Docket No. ER79-299]
[FR Doc. 79-12410 Filed 4-20-79; 8:45 am]
BILLING CODE 6450-01-M

IMC Exploration Co., et al.; Notice of Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

April 12, 1979.

On April 4, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Louisiana

Department of Natural Resources, Office of Conservation

FERC Control Number: JD79-2649
API Well Number: 1711101705
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling Lbr. #16
Field: Monroe Gas
County: Union

Purchaser: Mid Louisiana Gas Company
Volume: 6.2 MMcf.

FERC Control Number: JD79-2650
API Well Number: 1711101720
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling Lbr. #7
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 8.8 MMcf.

FERC Control Number: JD79-2651
API Well Number: 1711101704
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling Ebr. #21
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 7.7 MMcf.

FERC Control Number: JD79-2652
API Well Number: 1711101703
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling Lbr. #20
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 8.4 MMcf.

FERC Control Number: JD79-2653
API Well Number: 1711101710
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling Lbr. #17
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 2.6 MMcf.

FERC Control Number: JD79-2654
API Well Number: 1711101682
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling Lbr. #9
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 10.2 MMcf.

FERC Control Number: JD79-2655
API Well Number: 1711101713
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling Lbr. #8
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 7.3 MMcf.

FERC Control Number: JD79-2656
API Well Number: 1711102585
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling Lbr. #26
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 17.5 MMcf.

FERC Control Number: JD79-2657
API Well Number: 1711102584
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling Lbr. #24
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 5.5 MMcf.

FERC Control Number: JD79-2658
API Well Number: 1711102586
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling Lbr. #23
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 5.1 MMcf.

FERC Control Number: JD79-2659
API Well Number: 1711101651
Section of NGPA: 108
Operator: IMC Exploration Company
Well Name: Grayling Lbr. #22
Field: Monroe Gas
County: Union
Purchaser: Mid Louisiana Gas Company
Volume: 1.5 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before May 8, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Lois D. Cashell,
Acting Secretary.
[FR Doc. 79-12435 Filed 4-20-79; 8:45 am]
BILLING CODE 6450-01-M

Iowa Power & Light Co., Applicant, and Northern Natural Gas Co., Respondent; Notice of Application

April 13, 1979.

Take notice that on February 20, 1979, Iowa Power and Light Company (Applicant), 666 Grand Avenue, P.O. Box 657, Des Moines, Iowa 50303, filed in Docket No. CP79-198 an application pursuant to section 7(a) of the Natural Gas Act for an order of the Commission directing Northern Natural Gas Company (Respondent) to construct facilities in order to establish a new delivery point for the benefit of Applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant states that in 1974, it installed two combustion turbine electric generators at its Sycamore Power Station north of Des Moines in Johnston, Iowa, for the purpose of serving electric peak load on its electric distribution system. It is stated that the turbines have a design rating of 75 megawatts each and have the capability of operating on either natural gas or No. 2 middle distillate oil as fuel. Respondent's 16-inch "B" transmission line, from its Ogden, Iowa compressor station to its Des Moines Town Border Station Number 1A, passes through the site of the Sycamore Substation, it is stated. Applicant indicates that the proposed town border meter would be located at the site of the Sycamore Power Station and immediately adjacent to the combustion turbine electric generators (Sycamore Turbines). Applicant further states it would serve only the Sycamore Turbines through the proposed town border meter and that such service would be entirely interruptible and subject to all provisions of Northern's FERC Gas Tariff, 3rd Revised Volume No. 1, pertaining to curtailment of gas used for electric generation.

Applicant asserts that the estimated cost of the proposed facilities is $140,000 which would be financed from Applicant's funds on hand.

It is stated that the proposed facilities would enable Applicant to displace No. 2 fuel oil with natural gas whenever natural gas is available for electric generation pursuant to Respondent's curtailment plan. It is further stated that availability of natural gas would also increase the reliability of service to Applicant's electric customers during the peak electric load periods of the summer, when supplies of No. 2 fuel oil may not be sufficient to meet the needs of Applicant's peaking units. Applicant states that any savings of No. 2 fuel oil would reduce the shortage of that commodity and would benefit Applicant's customers through the use of lower cost natural gas and increased reliability of service.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 9, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to the taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a

petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,
Acting Secretary.

[Docket No. CP79-198]

[FR Doc. 79-12424 Filed 4-20-79; 8:49 am]

BILLING CODE 6450-01-M

J. A. Kimmey, (Operator), et al. Order Granting Special Relief From Refund Obligation

Issued April 11, 1979.

By letter received November 28, 1977, Mrs. J. A. Kimmey, widow of J. A. Kimmey, requested relief from the outstanding refund obligation of her late husband because of her poor financial situation. [1] This refund obligation arises out of sales made to Tennessee Gas Pipeline Company (Tennessee) under J. A. Kimmey (Operator), *et al.* (Kimmey), Rate Schedule No. 1, from the Blue Basin Field, Wharton County, Texas. [2] Production from the well concerned ceased in June of 1964.

Producer	Working interest (percent)
J. A. Kimmey	25.000
Arnold Oil Well Service, A Corporation	25.000
Oscar Spitz	14.585
Simon Grossman	14.585
Joe Simon	12.500
Edward Grossman	8.330

By order issued on August 7, 1959 in Docket No. G-16868 Kimmey's rate increase was allowed to become effective as of June 3, 1959, subject to refund. That order also required Kimmey to file a surety bond in the amount of $3,800.00. On August 20, 1959, Kimmey submitted the surety bond, issued by the St. Paul Fire and Marine Insurance Company.

Kimmey did not file a refund report covering the gas sold subject to refund in Docket No. G-16858. Based upon Tennessee's Form 2 annual reports and Kimmey's Form 301-A annual reports, Staff has estimated Kimmey's refund obligation to be approximately $8,000.00. On July 14, 1977, the Commission issued an order in Docket Nos. AR64-1, *et al.* requiring Kimmey to disburse all refunds then owed to Tennessee under Kimmey's Rate Schedule No. 1. [3] The funds have not yet been disbursed.

[1] This proceeding was commenced before the FPC. By the joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the FERC. The term "Commission", when used in the context of action taken prior to October 1, 1977, refers to the FPC; when used otherwise the reference is to the FERC.

[2] The other working interest owners under this rate schedule are as follows:

[3] Docket No. G-16858 was consolidated with the Texas Gulf Coast Area Rate proceeding in Docket Nos. AR64-2, *et al.* Subsequently, Opinion Nos. 595 and 595-A set just and reasonable rates in this area and provided for refunds

Mrs. Kimmey's request for special relief from this refund obligation is based upon her inability to satisfy the outstanding debts of Mr. Kimmey. The purchaser, Tennessee, has agreed to waive the refund of Kimmey, in Docket No. G-16858, provided that it is not later held accountable for refunds not collected under this rate schedule.

Based upon equitable considerations, we have determined that refunds should not be required of Mrs. Kimmey in Docket No. G-16858. Nor do we believe it worthwhile for administrative reasons to require refunds of the other interest owners. Since we are relieving Mrs. Kimmey and the other interest owners of their refund obligation, we do not believe it appropriate in the circumstances presented here to hold the bonding company liable.

The Commission orders: (A) No refunds are required to be made under J. A. Kimmey (Operator), *et al.* Gas Rate Schedule No. 1 and the proceeding in Docket No. G-16858 is terminated.

(B) The St. Paul Fire and Marine Insurance Company is relieved from its obligation under the surety bond in Docket No. G-16858.

(C) Tennessee Gas Pipeline Company is relieved of any accountability for refunds not collected under J.A. Kimmey (Operator), *et al.*, Gas Rate Schedule No. 1.

By the Commission.

Kenneth F. Plumb,
Secretary.

[Docket Nos. G-16858; AR64-2, *et al.* (Texas Gulf Coast Area)]

[FR Doc. 79-12425 Filed 4-20-79; 8:45 am]

BILLING CODE 6450-01-M

Locust Ridge Gas Co.; Notice of Filing of Amendment to Proposed Changes in FERC Gas Tariff

April 16, 1979.

Take notice that Locust Ridge Gas Company (Locust Ridge) on April 12, 1979, tendered for filing amendments to its proposed changes in its FERC Gas Tariff Original Volume No. 3 that was filed on March 30, 1979. The proposed changes would increase revenues from jurisdictional sales and service by $466,540 based on the twelve (12) month period ending December 31, 1978, as adjusted. Locust Ridge states that the principal reasons for the proposed rate increases are increased operating costs and to partially offset a new operating revenue deficiency.

Copies of the filing were served upon the company's jurisdictional customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 1, 1979. Protests will be considered by the Comission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petiton to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[Docket No. RP79-58]

[FR Doc. 79-12411 Filed 4-20-79; 8:45 am]

BILLING CODE 6450-01-M

Michigan Wisconsin Pipe Line Co.; Notice of Proposed Changes in FERC Gas Tariff

April 16, 1979.

Take notice that on April 12, 1979, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) tendered for filing First Revised Sheet No. 7 to its F.E.R.C. Gas Tariff, Original Volume No. 1. Michigan Wisconsin proposed an effective date of May 1, 1979 for said revised tariff sheet.

Michigan Wisconsin states that this tariff sheet should replace Third Substitute Twenty-second Revised Sheet No. 27F and Second Substitute Twenty-third Revised Sheet No. 27F, filed by Michigan Wisconsin on March 15, 1979, to be effective as of May 1, 1979. The Commission issued two orders on March 30, 1979, (1) approving the Stipulation and Agreement submitted by Michigan Wisconsin at Docket No. RP77-60 and, (2) accepting for filing and suspending Michigan Wisconsin's proposed rate increase at Docket No. RP79-39. These orders triggered events that necessitate the withdrawal of Third Substitute Twenty-second Revised Sheet No. 27F and Second Substitute Twenty-third Revised Sheet No. 27F and the filing of First Revised Sheet No. 7. First Revised Sheet No. 7 reflects; (1) the base settlement rates approved at Docket No. RP77-60, adjusted in accordance with Articles I, IV and V of the Stipulation and Agreement, and (2) a revision to the PGA adjustment filed on March 15, 1979, resulting from the Stipulation and Agreement.

Michigan Wisconsin further states that it requests a waiver of the requirements of Part 154 of the Commission's Regulations under the Natural Gas Act to the extent that such waiver may be necessary to permit this filing of First Revised Sheet No. 7 to be

made and to become effective May 1, 1979.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 1, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[Docket No. RP73-14]
[FR Doc. 79-12412 Filed 4-20-79; 8:45 am]
BILLING CODE 6450-01-M

Michigan Wisconsin Pipe Line Co., and El Paso Natural Gas Co.; Notice of Joint Petition To Amend

April 12, 1979.

Take notice that on March 22, 1979, Michigan Wisconsin Pipe Line Company (Mich Wisc), One Woodward Avenue, Detroit, Michigan 48226, and El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP78-18 a joint petition to amend the Commission's order issued August 16, 1978, in said docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the acquisition by El Paso of a portion of Mich Wisc's interest in certain offshore pipelines and related facilities, all as more fully set forth in the petition to amend.

It is stated that the order of August 16, 1978, authorized Mich Wisc, Transcontinental Gas Pipeline Corporation, United Gas Pipe Line Company, Natural Gas Pipeline Company of America, and Trunkline Gas Company to construct and operate approximately 10.3 miles of 16-inch and 12-inch O.D. pipeline and related facilities, necessary to connect available natural gas supplies located in High Island Blocks A-309, A-312, A-327 and A-332, offshore Texas, to the certificated pipeline system of High Island Offshore System (HIOS), for the purpose of making said gas available onshore. It is indicated that El Paso has obtained certain leasehold rights covering fifteen percent of the natural gas reserves underlying High Island Block A-309, located in the East Addition, High Island Area South Extension, Federal Domain, offshore Texas. Such gas reserves constituted a portion of the reserves used in determining the proportionate interest of Mich Wisc in each of the subject connecting lateral pipelines, it is stated. El Paso and Mich Wisc state that they have entered into an ownership agreement dated December 13, 1978, in order that El Paso may make its Block A-309 gas reserves available through certain of the pipeline facilities constructed and operated by the parties, to HIOS for transportation onshore. The agreement provides for the acquisition by El Paso and the conveyance by Mich Wisc, of that portion of Mich Wisc's ownership interest in the subject pipelines which is attributable to the interest of El Paso in natural gas produced from Block A-309, it is stated.

It is asserted that the facilities, in which a percentage interest is to be conveyed by Mich Wisc to El Paso, consist of three of the four connecting lateral pipelines and other necessary facilities authorized in Docket No. CP78-18. The pipelines to be acquired by El Paso from Mich Wisc and conveyed to El Paso by Mich Wisc are described as follows:

(i) Approximately 3.0 miles of 16-inch O.D. pipeline commencing on the production platform located in Block A-309 and running southerly to the north side of the most northerly of two 12-inch tap valves located in Block A-312 (Segment One);

(ii) Approximately 4.3 miles of 16-inch O.D. pipeline commencing at the southerly terminus of Segment One, and running southerly to the north side of a 12-inch tap valve in Block A-327 at or near the common boundary of Blocks A-327 and A-332 (Segment Two); and

(iii) Approximately 2.8 miles of 16-inch O.D. pipeline commencing at the southerly terminus of Segment Two and running southerly to the north side of a 16-inch underwater tap valve on the HIOS pipeline in Block A-332 (Segment Three).

El Paso, it is stated, would have fifteen percent interest in Segment One, a nine and two-tenths percent interest in Segment Two, and a four and three-tenths percent interest in Segment Three with Mich Wisc sustaining a reduction in its percentage ownership accordingly.

El Paso would reimburse Mich Wisc for El Paso's *pro rata* share of the construction costs of the subject facilities incurred through October 31, 1978. Such costs are estimated to be approximately $341,562, it is stated. El Paso states it would reimburse Mich Wisc for the portion of the costs of operation and maintenance incurred by Mich Wisc under operating agreements dated as of May 23, 1977, attributable to the percentage ownership interest of El Paso in each segment.

Any person desiring to be heard or to make any protest with reference to said petition should on or before May 7, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois Cashell,
Acting Secretary.

[Docket No. CP78-18]
[FR Doc. 79-12426 Filed 4-20-79; 8:45 am]
BILLING CODE 6450-01-M

New England Power Co.; Notice of Compliance Filing

April 16, 1979.

Take notice that New England Power Company (NEPCO) on March 6, 1979 tendered for filing an Amendment to the NEPOOL Power Pool Agreement filed in compliance with Commission Opinions 775 and 775-A in Docket No. E-7690. The filing of this Amendment was noticed in Docket No. ER79-238 on March 15, 1979. Any filing submitted in response to this notice in Docket No. ER79-238 will be construed as having been submitted in Docket No. E-7690, including a petition to Intervene Out of Time filed on April 2, 1979, by the municipalities of the Cities of Groton, Jewett City, Norwalk Taxing District No. 2, Norwalk Taxing District No. 3, City of Norwich, Town of Wallingford, Connecticut and the Towns of Concord, Norwood and Wellesley, Massachusetts.

Parties who were parties to Docket No. E-7690 remain parties with standing to protest this compliance filing.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such protests should be filed on or before May 7, 1979. Protests will be considered by the Commission in determining the

appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[Docket No. E-7690]
[FR Doc. 79-12413 Filed 4-20-79; 8:45 am]
BILLING CODE 6450-01-M

Niagara Mohawk Power Corp.; Notice of Certification of Settlement Agreement

April 16, 1979.

Take notice that Administrative Law Judge Bruce Birchman on March 23, 1979 certified to the Commission a proposed settlement agreement containing alternate proposals of settlement between the Company and intervenor Hudson Gas & Electric Company. The Judge indicates that the only issue remaining in dispute in this docket is the question as to what the Commission intended by use of the term "compensation adjustment" in its order of November 27, 1978. The Judge indicates that he believes that each of the two proposals set forth in the settlement agreement can be considered as a "compensation adjustment" and, therefore, that adoption of either of the settlement proposals by the Commission would result in disposition of the case.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such protests should be filed on or before May 11, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[Docket No. ER78-279]
[FR Doc. 79-12414 Filed 4-20-79; 8:45 am]
BILLING CODE 6450-01-M

Northern Lights, Inc.; Notice of Application for License

April 13, 1979.

Take notice that an application for a major license for the Kootenai River Project No. 2752 was filed on November 30, 1978, under the Federal Power Act (16 U.S.C. §§ 791(a)–825(r)) by Northern Lights, Inc. (Applicant). The unconstructed hydroelectric project would be located on the Kootenai River in Lincoln County, near the towns of Libby and Troy, Montana. The proposed project would affect lands of the United States in the Kootenai National Forest. Correspondence with the applicant should be sent to: Mr. William T. Nordeen, General Manager, Northern Lights, Inc., P.O. Box 310, Sandpoint, Idaho 83864.

The unconstructed Kootenai River Project would consist of: (1) a 925-foot long, 30-foot high concrete gravity overflow dam surmounted by flap gates over its entire length; (2) a 150-acre, 3.5-mile long reservoir with a gross capacity of 1,220 acre-feet at its normal maximum elevation of 2,000 feet (mean sea level datum; (3) a water conveyance system to consist of an intake located along the south bank of the reservoir about 600 feet upstream of the dam, a 3,000-foot long tunnel leading to the powerhouse and 1,200-foot long tailrace tunnel leading from the powerhouse to the Kootenai River; (4) an underground powerhouse containing four 44,650 kW generating units and switching facilities; (5) a 230-kV transmission line which would connect with Pacific Power & Light Company's existing Libby-Albeni Falls transmission line which passes directly over the site of the proposed powerhouse; and (6) recreational facilities to include trail improvements, a comfort station, additional picnic tables at an existing picnic area, and parking for 25 cars and eight trailers.

Applicant states that no residents will be forced to relocate as a result of the project development. A segment of the Burlington Northern Railroad line will be raised and relocated.

Applicant plans to begin operation of the project within 4.5 years of issuance of a license. The estimate of present day construction cost is $163,000,000. Power from the project will be used by the Applicant and a consortium of seven other rural electric cooperatives to serve their customers.

Anyone desiring to be heard or to make any protest about this application should file a protest or a petition to intervene with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure ("Rules"), 18 CFR § 1.10 or § 1.8 (1978). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest or petition to intervene must be filed on or before June 25, 1979. The Commission's address is: 825 N. Capitol Street, N.E., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

Lois D. Cashell,
Acting Secretary.

[Project No. 2752]
[FR Doc. 79-12427 Filed 4-20-79; 8:45 am]
BILLING CODE 6450-01-M

Pacific Power & Light Co.; Notice of Supplemental Rate Schedule filing

April 16, 1979.

The filing company submits the following:

Take Notice that Pacific Power & Light Company (Pacific) on April 12, 1979, tendered for filing, in accordance with Section 35.13 of the Commission's Regulations, a Supplemental Agreement and a Letter Agreement with the United States of America, Department of Energy, Western Area Power Administration (WAPA). These agreements provide for microwave communications, installation of tuned inductors, a new temporary point of delivery, and termination of certain out-of-date provisions.

Pacific requests waiver of the Commission's notice requirements to permit an effective date of January 1, 1979 for the Supplemental Agreement and an effective date of Marcy 1, 1979 for the Letter Agreement, which it claims are the dates of commencement of service.

Copies of the filing were supplied to WAPA.

Any person desiring to be hear or to protest said application should file a petition to intervene or protest with the Federal Enery Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 8, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[Docket No. ER79-298]
[FR Doc 78-12415 Filed 4-20-79; 8:45 am]
BILLING CODE 6450-01-M

Pennsylvania Power & Light Co., Notice of Application

April 13, 1979.

Take notice that Pennsylvania Power & Light Company (PP&L) on March 27, 1979, tendered for filing application for approval of the sale by Metropolitan Edison Company (ME) and the purchase by PP&L of certain 69 kv transmission line and substation facilities and the lease by ME to PP&L of certain other transmission line facilities all located in Derry Township, Dauphin County, Pennsylvania, together with all land and land rights appurtenant thereto, pursuant to Section 203 (a) of the Federal Power Act.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8,1.10). All such petitions or protests should be filed on or before May 14, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Lois D. Cashel,
Acting Secretary.

[Docket No. EL 79-11]
[FR Doc. 79-12428 Filed 4-20-79; 8:45 am]
BILLING CODE 6450-01-M

Seagull Pipeline Corp.; Notice of Application

April 13, 1979.

Take notice that on March 16, 1979, Seagull Pipeline Corporation (Seagull), 1800 Capital National Bank Building, 1300 Main Street, Houston, Texas 77002, filed in Docket No. CP79-240, pursuant to Section 1.7(c) of the Commission's Rules of Practice and Procedure (18 CFR 1.7(c)) for a declaratory order, with respect to Seagull's construction and operation of pipeline facilities between two production platforms located wholly in state waters offshore Texas, finding that Seagull is an intrastate pipeline within the meaning of Section 2(16) of the Natural Gas Policy Act of 1978 (NGPA) and, therefore, is eligible to perform transportation service for an interstate pipeline under Section 311 (a) (2) of the NGPA. Alternatively, Seagull requests the Commission to find and declare that its proposed pipeline facilities would perform a gathering function and, therefore, under Section 1(b) of the Natural Gas Act (NGA), the Commission would not have jurisdiction over such facilities or the services rendered thereby. Seagull's proposals are more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is stated that Houston Oil & Minerals Corporation (HOM), the parent corporation of Seagull, is the holder of oil and gas leases issued by the State of Texas covering tracts in the Matagorda Island area of the Texas offshore domain. It is further stated that HOM is considering the sale of its Matagorda Island gas to one of several interstate and intrastate pipeline and industrial purchasers or, in the alternative, the sale of part of its gas to an interstate pipeline and the remainder to an intrastate pipeline or industrial purchaser. If HOM makes an interstate sale of all or a part of its Matagorda Island gas, such gas would be sold at the applicable maximum price provided by the NGPA for gas delivered on HOM's platform, it is stated. Seagull states that any interstate purchaser would have to construct at least 30 miles of pipeline in order to connect to HOM's platform. Therefore, states Seagull, it proposes to construct and operate approximately 15.5 miles of 16-inch pipeline at an estimated cost of $7,500,000 to take gas from HOM's platform to a point of interconnection with the existing intrastate pipeline facilities of Houston Pipe Line Company (HPC) located on the platform of another producer, Corpus Christi Oil & Gas Corporation. It is stated that at this other platform the gas would be run through additional separation facilities, metered and delivered into HPC's existing facilities for transportation by HPC to a mutually agreeable redelivery point onshore.

Seagull asserts that if it is declared to be an intrastate pipeline within the meaning of Section 2(16) of the NGPA, then the delivery point of the gas would be HOM's platform, and in accordance with Section 311(a)(2) of the NGPA and Part 284 of the Commission's interim regulations implementing the NGPA, Seagull would transport the gas to the Corpus Christi platform on behalf of the interstate purchaser for a term of two years. If the Commission should declare that Seagull would be performing a gathering service, then the delivery point would be at the Corpus Christi platform and application would be made to the Commission under Section 110 of the NGPA for approval of the charge for the extraordinary gathering service Seagull would perform, it is stated.

Seagull states that the primary function of the facilities it proposes to construct is to deliver the gas to be produced and sold by HOM from HOM's offshore platform to the Corpus Christi offshore platform. Seagull indicates it is not certain whether it would be performing a transportation or a gathering service in taking HOM's gas between these two offshore platforms. It is stated that if Seagull would be performing a gathering service, then under Section 1(b) of the NGA, the Commission would not have jurisdiction over Seagull's facilities or such gathering service. If Seagull would be performing a transportation service, the question arises as to whether it would be engaged in transportation which is not subject to NGA jurisdiction, it is stated. It is asserted that Seagull believes its facilities would be intrastate in nature as such facilities would simply connect HOM's platform with the existing intrastate pipeline facilities of HPC at the Corpus Christi platform. It is stated that initially, the sole function of Seagull's facilities would be to take HOM's working interest gas and State of Texas' royalty gas from HOM's plarform to the Corpus Christi platform. It is expected that the gas of other producers in the area would be delivered into Seagull's line so that such gas may be sold to interstate or intrastate purchasers, states Seagull. Accordingly, states Seagull, if it would be performing a transportation service, it would be engaged in transportation which is not subject to NGA jurisdiction and would qualify as an intrastate pipeline within the meaning of Section 2(16) of the NGPA and be eligible to transport natural gas pursuant to Section 311(a)(2) of the NGPA.

Seagull states that issuance of a declaratory order would be in the best interests of interstate consumers by removing uncertainty as to the status of Seagull's facilities so that HOM may make a sale of all or part of its Matagorda Island gas to an interstate pipeline. Seagull also states that if HOM makes a sale of its Matagorda Island gas to an interstate purchaser, the cost of transporting such gas through Seagull's facilities and the existing facilities of HPC would be substantially less than the cost which would be incurred if an interstate purchaser constructed new separate interstate facilities to take delivery of HOM's gas on HOM's platform as is customary.

Any person desiring to be heard or to make any protest with reference to said petition should on or before May 9, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a

petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Lois D. Cashell,
Acting Secretary.

[Docket No. CP79-240]
[FR Doc. 79-12429 Filed 4-20-79; 8:45 am]
BILLING CODE 6450-01-M

South Carolina Electric & Gas Co.; Notice of Certification of Settlement Agreement

April 16, 1979.

Take notice that Presiding Administrative Law Judge Jon G. Lotis on April 2, 1979, certified to the Commission a settlement agreement which the Judge states resolves all issues in this proceeding.

Any person desiring to protest said certification should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's rules of Practice and Procedure (18 CFR 1.8, 1.10). All such protests should be filed on or before May 2, 1979. Protests will be considered by the Comission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Acting Secretary.

[Docket No. ER78-283]
[FR Doc. 79-12416 Filed 4-20-79; 8:45 am]
BILLING CODE 6450-01-M

Town of Springfield, Vermont; Notice of Application for Major License

April 13, 1979.

Take notice that the Town of Springfield, Vermont (Applicant) filed an application pursuant to the Federal Power Act, 16 U.S.C. §§ 791a–825r, on June 5, 1978, and supplemented on January 2, 1979, for the proposed black River Project No. 2750. The proposed project would be located on the Black River in Windsor County, Vermont and would occupy lands of the United States. Correspondence with Applicant concerning the application should be sent to: Mr. Michael J. Valuk, Town Manager, 96 Main Street, Springfield, Vermont 05156; and R. W. Beck and Associates, 200 Tower Building, Seattle, Washington 98101.

The proposed project would consist of:

(1) The Hawks Mountain development with a 900-foot-long earthfill dam, approximately 165 feet high with a crest at elevation 775 feet m.s.l.; a reservoir with a storage capacity of 6,000 acre-feet; and powerhouse with 3 generating units with a total installed capacity of 14,640 kW.

(2) The Covered Bridge development with a 400-foot long concrete gravity dam, with a crest elevation of 615 feet; a reservoir with a storage capacity of approximately 350 acre-feet; and a powerhouse with a 3,000 kW generating unit.

(3) The Tolles Hill development with an existing concrete gravity overflow dam to be raised 11 feet to elevation of 510 and located within the Corps of Engineers North Springfield Flood Control Project; a reservoir with a storage capacity of 200 acre-feet; and a powerhouse with one generating unit rated at 3,000 kW.

(4) The Gilman development with a 380-foot-long concrete gravity with a crest elevation of 425 feet replacing an existing dam in the immediate area; a 2.3 acre reservoir with no storage capacity; and a powerhouse with a 3,000 kW generating unit.

(5) The Comtu Falls development with an existing 40-foot-long concrete gravity overflow dam that would be raised 2.5 feet to elevation 395 feet; a 0.7 acre reservoir with no storage capacity; and a powerhouse with a 3,000 kW generating unit.

(6) The Lovejoy development with the existing 100-foot long concrete gravity overflow Slack dam with a crest elevation of 364.1 feet; a 0.9-acre reservoir with no storage capacity; a 900-foot-long conduit; and a powerhouse with a 3,000 kW generating unit.

The project transmission facilities would include a switchyard to be located downstream from the Hawks Mountain dam connected by transmission lines to the Hawks Mountain, Covered Bridge, and Tolles Hill developments; and a 1.7 mile long 115-kV transmission line from the switchyard to the interconnected system. The remaining three developments would be connected directly to the local distribution system.

The Applicant proposes to provide the following recreation facilities at the Hawks Mountain development: three boat launch ramps, a day use park, and a hiking trail. At the three developments in Springfield the Applicant would provide two viewing platforms and a small park.

The Applicant intends to use the power for public utility purposes, either within its distribution system or for sale to other public utilities.

Anyone desiring to be heard or to make any protests about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1977). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party, or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest or petition to intervene must be filed on or before June 25, 1979. The Commission's address is: 825 N. Capitol Street, NE., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

Lois D. Cashell,
Acting Secretary.

[Project No. 2750]
[FR Doc. 79-12430 Filed 4-20-79; 8:45 am]
Billing Code 6450-01-M

Village of Saugerties; Notice of Application for Preliminary Permit

April 13, 1979.

Take notice that on October 26, 1978, the Village of Saugerties filed an application for preliminary permit (pursuant to the Federal Power Act 16 U.S.C. Section 791 (a)–825(r)) to study the feasibility of rehabilitating an existing inoperative waterpower project, FERC No. 2882, located on Esopus Creek, a tributary to the Hudson River in Ulster County, New York. The rehabilitated project, which would be known as the Diamond Mill Power Project, may affect the interests of interstate commerce.

Correspondence with the Applicant should be directed to: George A. Turner, Jr., Mayor, Village of Saugerties, Village Hall, Post Office Box 96, Saugerties, New York 12477 and Paul G. Van Buskirk, P.E., Paul G. Van Buskirk Associated, Ltd., Post Office Box 465, 47 Olmstead Street, Cohoes, New York 12047.

Purpose of Project—Project energy would be sold to either the Hudson Valley Power Authority or the New York State Power Pool (Power Authority of the State of New York). Applicant states that the land on the upper area of

the reservoir has been developed for recreation, including a village beach and swimming area, and that the waters upstream are also used for sport fishing.

Proposed Scope and Cost of Studies Under Permit—Applicant proposes to apply for and perfect State Water Rights' permits, prepare a feasibility study, develop the supporting data for the filing of an application for license, and conduct additional analyses of Applicant's peak power, and energy requirements and power supply contracts as they may relate to the proposed project.

It is estimated that the cost of activities to be conducted under the permit would be approximately $40,000.00.

Project Description—The Applicant's proposed Diamond Mill Power Project, located at about Esopus Creek—mile one, would consist of: (1) an existing concrete gravity dam (constructed in 1930) about 346 feet long with a maximum height of 32 feet, containing two inoperative 42-inch-diameter sluice pipes through the dam near its center; (2) an existing reservoir with a surface area of 140 acres at spillway crest elevation of 46.5 feet and having a storage capacity of 826 acre-feet; (3) an existing by-pass channel about 15 feet wide with its entrance immediately upstream of the right dam abutment; (4) an existing vertical sliding gate with trash rack at the left dam abutment leading to a side channel spillway and penstock; (5) the existing side channel spillway; (6) the existing steel penstock 5 feet in diameter and about 50 feet long; (7) an existing powerplant located downstream from the left dam abutment at an approximate elevation of 25.0 feet, containing one existing inoperative generator of unknown capacity, which would be repaired or replaced to bring the installed capacity of the plant to 1,500 kW; and (8) appurtenant facilities.

The project would be operated as run-of-the-river, although the power head would vary. Applicant estimates that the powerplant would be capable of producing 13 million kWh per year.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit if issued gives the Permittee, during the term of the permit, the right of priority of application for license while Permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility for the project, the market for the power, and all other necessary information for inclusion in an application for license. In this instance, the Applicant seeks a 36-month permit.

Agency Comments—Federal, State, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. (A copy of the application may be obtained directly from the Applicant). Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made. If any agency does not file comments within the time set below, it will be assumed to have no comments.

Protest, Petition to Intervene, and Agency Comments:—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR Section 1.8 or Section 1.10 (1977). In determining the appropriate action to take, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party or a person to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules. Any protest, petition to intervene, or agency comments must be filed on or before June 18, 1979. The Commission's address is: 825 North Capitol Street, N.E., Washington, D.C. 20426. The application is on file with the Commission and is available for public inspection.

Lois D. Cashell,
Acting Secretary.

[Project No. 2882]
[FR Doc. 79-12421 Filed 4-20-79; 8:45 am]
BILLING CODE 6450-01-M

West River Basin Energy Committee, Inc.; Notice of Application for Preliminary Permit

April 6, 1979.

Take notice that on February 21, 1978, the West River Basin Energy Committee, Inc., filed an application for a preliminary permit, prusuant to the Federal Power Act, 16 U.S.C. § 791(a)–825(r) for proposed Project No. 2838, to be known as the West River Porject, located on the West River and two of its tributaries, the North Branch Brook and the Rock River, in Windsor and Bennington Counties, Vermont. Correspondence to Malvine Cole, Secretary-Clerk, West River Basin Energy Committee, Inc., RFD 1, Jamaica, Vermont 05343, and John Parker, Esquire, Parker and Lamb, Ltd., P.O. Box 519, Springfield, Vermont 05156.

The project would utilize two existing government dams, and abandoned generating facility, and two proposed new sites.

Purpose of Project—The project would produce hydroelectric power to meet present and future load requirements of the various towns which are members of the Applicant.

Proposed Scope and Cost of Studies Under Permit—The work proposed will include feasibility studies, surveys, topographic mapping, environmental assessment studies, load studies, interconnection studies, gathering of marketing data and measuring the potential of the existing facilities at Ball Mountain, Townshend, and other potential sites on the West River and its tributaries. These studies would be coordinated with data already developed with and by the United States Army Corps of Engineers. Applicant states that the environmental studies will be conducted to achieve a balance between economic and environmental considerations. It is anticipated that the cost of the studies will range from $100,000.00 to $400,000.00.

Project Description—The proposed project would consist of the development of hydroelectric generating capacities at the existing Townshend and Ball Mountain dams, both operated by the Corps of Engineers, and rehabilitation of an abandoned development at West Dummerston Dam and two totally new developments to be known as the North Branch Brook and Rock River sites.

A. Townshend Dam

This facility, located in the Town of Townshend, is of rolled earth fill and rock slope construction, approximately 1,700 feet long and 133 feet high, with a crest elevation of 583 feet msl. A concrete spillway is located in the northeast abutment with a crest elevation of 553 feet msl. The proposed power plant would operate under a design head of 25 feet and would provide 4.0 mW of capacity. The reservoir consists of a permanent pool of 95 acres and has a storage capacity of 800 acre-feet at an elevation of 478 feet msl. The reservoir under high flood conditions has a surface area of 735 acres with a storage capacity of 32,900 acre-feet at the spillway crest elevation.

B. Ball Mountain Dam

This existing flood control facility, located in the Towns of Jamaica and Townshend, is of rolled earth fill, rock slope construction with an impervious

core, approximately 915 feet long, and 265 feet high. The top of embankment elevation is 1,052 feet msl. The spillway, located on the west abutment, is 235 feet long and has a crest elevation of 1,017 feet msl.

It is anticipated that 20 megawatts of peak or intermediate capacity can be produced by two turbine-generator units.

The reservoir has a permanent pool of 20 acres and a storage capacity of 240 acre-feet at an elevation of 952 feet msl. The reservoir has a conservation pool of 75 acres and a storage capacity of 2,000 acre-feet at an elevation of 992 feet msl.

If the lake were filled to the spillway crest (1,017 feet msl) the lake would contain approximately 52,450 acre-feet.

C. West Dummerston Dam

The existing West Dummerston Dam is situated on the West River in the Town of Dummerston. This abandoned development has inoperative generating facilities consisting of two units of 500 kW and 350 kW. It is anticipated that when rehabilitated, this development would have two 500 kW generating units and would produce a minimum of 3,000,000 kilowatt-hours of electric energy annually.

D. North Branch Brook Dam Site

The North Branch Brook Dam site is located on the North Branch Brook in the Town of Stratton approximately 5 miles from the junction of Ball Mountain Brook with the West River. This proposed low-head installation would provide one megawatt of peaking capacity in two units, with total annual generation of 3 million kilowatt-hours.

E. Rock River Site

The Rock River site, is on the Rock River in the Town of Newfane approximately 0.6 mile upstream from the junction of the Rock and West Rivers. It would have an installed capacity of one megawatt in two units, and produce a total annual generation of 3 million kilowatt-hours.

Purpose of Preliminary Permit—A preliminary permit does not authorize construction. A permit, if issued, gives the permittee, during the term of the permit, the right of priority of application for license while the permittee undertakes the necessary studies and examinations to determine the engineering, economic, and environmental feasibility of the proposed project, the market for power, and all other necessary information for inclusion in an application for a license. In this instance, the applicant seeks a permit for 36 months.

Agency Comments—Federal, state, and local agencies that receive this notice through direct mailing from the Commission are invited to submit comments on the described application for preliminary permit. A copy of the application may be obtained directly from the applicant.

Comments should be confined to substantive issues relevant to the issuance of a permit and consistent with the purpose of a permit as described in this notice. No other formal request for comments will be made.

If an agency does not file comments within the time set below, it will be presumed to have no comments.

Protests, Petitions to Intervene, and Agency Comments—Anyone desiring to be heard or to make any protest about this application should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR § 1.8 or § 1.10 (1977). In determining the appropriate action to taken, the Commission will consider all protests filed, but a person who merely files a protest does not become a party to the proceeding. To become a party or to participate in any hearing, a person must file a petition to intervene in accordance with the Commission's Rules.

Any protest, petition to intervene, or agency comments must be filed on or before June 15, 1979. The Commission's address is: 825 N. Capitol Street NE., Washington, D.C. 20426.

The application is on file with the Commission and is available for public inspection.

Lois D. Cashell,
Acting Secretary.

[Project No. 2838]
[FR Doc. 79-12431 Filed 4-20-79; 8:45 am]
BILLING CODE 6450-01-M

Zapata Gathering Co.; Notice of Application

April 13, 1979.

Take notice that on March 23, 1979, Zapata Gathering Company (Applicant), P.O. Box 17349, San Antonio, Texas 78217, filed in Docket No. CP79-237 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the acquisition by purchase and operation of a gas gathering system in Zapata and Starr Counties, Texas from Gulf Energy & Development Corporation (Gulf), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant requests authorization to acquire and operate a pipeline gathering system consisting of approximately 129 miles of pipeline ranging in diameter from 2⅞ inches to 16-inches, and extending from several fields in Zapata and Starr Counties, Texas, to a delivery point connecting with the existing gas pipeline system of Tennessee Gas Pipeline Company, a division of Tenneco Inc. (Tennessee), in the Zim Field, Starr County, Texas. Applicant states the system is currently owned and operated by Gulf, its parent company, which pursuant to a contract with Tennessee, uses the system to gether gas that has been purchased by Tennessee from numerous producers in Zapata and Starr Counties. It is indicated that the gas is gathered through the subject system and delivered to Tennessee at the above described delivery point on Tennessee's system. Tennessee then transports the gas in interstate commerce for resale, it is stated. Applicant states it proposes to operate the subject system to provide the same services for Tennessee that are currently being provided by Gulf. Applicant also proposes to acquire all of Gulf's right, title, and interest in and to all personal property and equipment situated on and used in connection with the pipeline gathering system and all easements, rights-of-way, leases, and contract rights held in connection with the ownership and operation of the system.

Applicant states that the gathering system would be acquired at the system's net book value as reflected on Gulf's books as of December 31, 1978. It is stated that the net book value of the system is not presently known as the 1978 year-end audit has not yet been completed. The net book value of the system as of December 31, 1977, was $4,132,386, it is stated. It is indicated that Gulf would make a capital contribution to Applicant to the extent of 49 percent of the net book value. The proposed transfer would create a debt owed by Applicant to Gulf, to the extent of the remaining 51 percent of the net book value, it is stated. Applicant states the debt created by the transfer would be evidenced by a note executed by Applicant payable to Gulf in 13 months and bearing interest at 125 percent of the prime interest rate with quarterly adjustments being made to compensate for fluctuations in the prime rate.

Applicant states that it would adopt Gulf's FERC Gas Rate Schedule No. 1 and would assume responsibility for all pending rate matters relating to the subject system. Applicant also states that Gulf has perfected an appeal to the

United States Court of Appeals for the District of Columbia from the Commission order issued in Rate Docket No. RP74–86. It is asserted that the eventual determination of this appeal would also affect the settlement reached by Gulf and the Commission in Docket No. RP76–97. Applicant states it would assume responsibility for any refund obligations that result from the pending appeal.

It is indicated that Gulf's compliance with applicable Commission regulations would be accomplished more efficiently and economically if the gathering system and related operations were segregated from its non-jurisdictional facilities and operations. The proposed transfer and sale is therefore an effort on Gulf's part to accomplish the above-mentioned objective, it is stated.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 9, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Lois D. Cashell,
Acting Secretary.

[Docket No. CP79–237]
[FR Doc. 79–12432 Filed 4–20–79; 8:45 am]
BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of 40 CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 707–EUP–92. Rohm and Haas Co., Philadelphia, Pennsylvania 19105. This experimental use permit allows the use of 454 pounds of the fungicide d-butyl-d-phenyl-1*H*-imidazole-1-propanenitrile on roses to evaluate control of black spot and powdery mildew. A total of 12 acres is involved; the program is authorized only in the States of California, Florida, Nebraska, Oklahoma, Oregon, Pennsylvania, South Carolina, Texas, Washington, and Wisconsin. The experimental use permit is effective from March 1, 1979 to October 31, 1979. (PM–21, Room: E–305, Telephone: 202/755–2562)

No. 400–EUP–58. Uniroyal Chemical, Bethany, Connecticut 06525. This experimental use permit allows the use of 212 pounds of the fungicide carboxin on peanuts to evaluate control of *Sclerotium rolfsii*. A total of 212 acres is involved; the program is authorized only in the States of Alabama, Florida, Georgia, North Carolina, Oklahoma, and Texas. The experimental use permit is effective from June 1, 1979 to June 1, 1980. A permanent tolerance for residues of the active ingredient in or on peanuts has been established (40 CFR 180.301). This permit is being issued with the limitations that the pesticide will not be applied within 30 days before harvest, rotational crops will not be applied within 18 months of the last application, livestock will not be fed or grazed on treated areas, and treated fields will not be hogged down. (PM–21, Room: E–305, Telephone: 202/755–2562)

No. 27586–EUP–16. U.S. Department of Agriculture, Forest Service, Washington, D.C. 20250. This experimental use permit allows the use of 117 pounds of the fungicide methyl 2-benzimidazolecarbamate phosphate on elm trees to evaluate control of Dutch elm disease. A total of approximately 280 trees are involved; the program is authorized only in the State of Michigan and in Washington, D.C. The experimental use permit is effective from May 27, 1979 to May 27, 1980. (PM–21, Room: E–305, Telephone: 202/755–2562)

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS–767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permits may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Statutory authority: Section 5 of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

Dated: April 12, 1979.

Herbert S. Harrison,
Acting Director, Registration Division.

[OPP–50419; FRL 1206–8]
[FR Doc. 79–12377 Filed 4–20–79; 8:45 am]
BILLING CODE 6560–01–M

National Drinking Water Advisory Council; Open Meeting

Under Section 10(a)(2) of Pub. L. 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under "The Safe Drinking Water Act, as amended (42 U.S.C. § 300f *et esq.*)," will be held at 9:00 a.m. on May 21, 1979, and at 8:30 a.m. on May 22, 1979 in the Elm Room, Sixth Floor, Environmental Protection Agency, Region VIII, 1860 Lincoln Street, Denver, Colorado.

The purpose of the meeting will be to review EPA's reproposed Underground Injection Control Regulations, discuss the activities of the trade association comprised of manufacturers of home water treatment devices (point-of-use industry), and share information on the implementation of the safe drinking water program with State program directors.

Both days of the meeting will be open to the public. The Council encourages the hearing of outside statements and will allocate a portion of its meeting time for public participation. If a large number of parties indicate an interest in presenting an oral statement dealing with the planned agenda topics, the Council retains the option to select to hear only a few statements representing a diversity of viewpoints. Oral statements are generally limited to 15 minutes followed by a 15 minute discussion period. It is preferred that there be one presentator for each statement. Any outside parties interested in presenting an oral statemenet should petition the Council in writing. The petition should include the general topic of the proposed

statement, the petitioner's telephone number, and should be received by the Council before May 16, 1979.

Any person who wishes to file a written statement can do so before or after a Council meeting. Accepted written statements will be recognized at the Council meeting and will be made part of the permanent meeting record.

Any member of the public wishing to attend the Council meeting, present an oral statement, or submit a written statement should contact, Mr. Patrick Tobin, Executive Secretary for the National Drinking Water Advisory Council, Office of Drinking Water (WH-550), Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

The telephone number is: Area Code 202/426-8877.

Thomas C. Jorling,
Assistant Administrator for Water and Waste Management.
April 13, 1979.

[FRL 1208-5]
[FR Doc. 79-12380 Filed 4-20-79; 8:45 am]
BILLING CODE 6560-01-M

Pesticide Programs; Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel; Open Meeting

AGENCY: Office of Pesticide Programs, Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a three-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel from 9:00 a.m. to 4:30 p.m. on Wednesday, Thursday, and Friday, May 9, 10, and 11, 1979. The meeting will be held in Room 1112A, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, Va., and will be open to the public.

FOR FURTHER INFORMATION CONTACT: Dr. H. Wade Fowler, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (TS-766), Room 803, Crystal Mall, Building No. 2, at the above address (Telephone: 703/557-7560).

SUPPLEMENTARY INFORMATION: In accordance with section 25(d) of the amended FIFRA, the Scientific Advisory Panel will comment on the impact of regulatory actions under sections 6(b) and 25(a) on health and the environment prior to implementation. On the agenda for this meeting are:

1. Review of a final rule amending 40 CFR 162.31 by adding certain uses of additional active ingredients which the Agency has classified for restricted use under the Procedures of § 162.30, Optional Procedures for Classification of Pesticide Uses by Regulation. The proposed rule was published January 9, 1979 (44 FR 1991);

2. Review of a proposed rule to classify additional active ingredients for restricted use under the procedures of § 162.30. This includes:

A. Granular formulations of active ingredients that have had certain uses already classified for restricted use or proposed for restricted use. They are: aldicarb, carbofuran, disulfoton, etheprop, fenamiphos, fensulfothion, fonofos, and phorate;

B. Considerations of all formulations, including granular, of: carbon disulfide, chloropicrin, cycloheximide, dicrotophos, EPN, fenthion, methamidophos, methidathion, nicotine (alkaloid), oxamyl, oxydemeton, methyl, temephos, terbufos, and zinc phosphide; and

3. In addition, the Agency may present status reports on other ongoing programs of the Office of Pesticide Programs.

Copies of draft documents may be obtained by contacting Mr. Walter Waldrop, Operations Division (TS-770), Room 507, East Tower, EPA, 401 M Street, S.W., Washington, D.C. 20460 (telephone: 202-755-7014).

Any member of the public wishing to attend or submit a paper should contact Dr. H. Wade Fowler, Jr., at the address or phone listed above to be sure that the meeting is still scheduled and to confirm that the Panel will review all of the agenda items. The public is advised that this meeting may not last the entire three-day period. Interested persons are permitted to file written statements before or after the meeting, and may, upon advance notice to the Executive Secretary, present oral statements to the extent that time permits. Written or oral statements will be taken into consideration by the Panel in formulating comments or in deciding to waive comments. Persons desirous of making oral statements must notify the Executive Secretary and submit the required number of copies of a summary no later than May 7, 1979.

Individuals who wish to file written statements are advised to contact the Executive Secretary in a timely manner to be instructed on the format and the number of copies to submit to ensure appropriate consideration by the Panel.

The tentative date for the next Scientific Advisory Panel meeting is May 23, 24, and 25, 1979.

Statutory authority: Section 25(d) of FIFRA, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136) and Sec. 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770).

Dated: April 16, 1979.

Edwin L. Johnson,
Deputy Assistant Administrator for Pesticide Programs.

[OPP-00092; 1208-4]
[FR Doc. 79-12379 Filed 4-20-79; 8:45 am]
BILLING CODE 6560-01-M

Pesticide Programs; Filing of Pesticide/Food Additive Petitions

Pursuant to sections 408(d)(1) and 409(b)(5) of the Federal Food, Drug, and Cosmetic Act, the Environmental Protection Agency (EPA) gives notice that the following petitions have been submitted to the Agency for consideration.

PP 9F2117. Sandoz, Inc., 480 Camino del Rio South, Suite 204, San Diego, CA 92108. Proposes that 40 CFR 180.356 be amended by establishing tolerance limitations for the combined residues of the herbicide norflurazon [4-chloro-5-methlyamino)-2-(α,α,α-trifluoro-*m*-tolyl)-3(2*H*)-pyridazinone], and its desmethyl metabolite [4-chloro-5-amino-2-(α,α,α-trifluoro-*m*-tolyl)-3(2*H*)-pyridazinone] in or on the following raw agricultural commodities:

Commodity:	*Parts per million (ppm)*
Apples, almonds, pears	0.10
Milk, eggs	0.10
Meat, poultry	0.10
Hops	0.60
Almonds hulls	1.50

The proposed analytical method for determining residues is by gas chromatography using an electron capture detector. PM23. (202/755-1397)

FAP 9H5208. Sandoz, Inc. Proposes that 21 CFR 193 be amended by permitting residues of the above herbicide in or on dried hops with a tolerance limitation of 2.60 ppm. PM23.

PP 9F2188. Stauffer Chemical Co., 1200 S. 47th, Richmond, CA 94804. Proposes that 40 CFR 180.261 be amended by establishing a tolerance limitation for the residues of the insecticide imidan [*N*-(mercaptomethyl)phthalimide, *S*-(*O,O*-dimethyl phosphordithioate)] in or on the raw agricultural commodity cottonseed at 0.1 ppm. The proposed analytical method for determining residues is by gas-liquid chromatography utilizing a phosphorus-specific detector (rubidium sulfate tip). PM15. (202/426-9425)

FAP 9H5211. Stauffer Chemical Co. Proposes that 21 CFR 193 be amended by permitting residues of the insecticide imidan on the commodity cottonseed oil with a tolerance limitation of 0.2 ppm. PM15.

Interested persons are invited to submit written comments on these petitions to the Federal Register Section, Program Support Division (TS-757), Office of Pesticide Programs, EPA, Rm. 401, East Tower, 401 M St., SW., Washington, D.C. 20460. Inquiries concerning these petitions may be directed to the designated Product Manager (PM) Registration Division

(TS–767), Office of Pesticide Programs, at the above address, or by telephone at the numbers cited. Written comments should bear a notation indicating the petition number to which the comments pertain. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m., Monday through Friday.

Dated: April 11, 1979.

Douglas D. Campt,
Acting Director, Registration Division.

[FRL 1208–7; PF–127]
[FR Doc. 79–12378 Filed 4–20–79; 8:45 am]
BILLING CODE 6560–01–M

Pesticide Programs; Approval of Application To Conditionally Register Pesticide Product Containing New Active Ingredient

On December 5, 1977, notice was given (42 FR 61516) that Shell Chemical Co., Suite 200, 1025 Connecticut Ave., NW, Washington, DC 20036, had filed an application (EPA File Symbol No. 201–UNR) with the Environmental Protection agency (EPA) to register the pesticide product Pydrin Insecticide 2.4 Emulsifiable Concentrate containing 30% of the active ingredient cyano (3-phenoxyphenyl) methyl-4-chloroalpha-(1-methylethyl) benzeneacetate which was not previously registered at the time of submission. Notice of registration is given in accordance with 40 CFR 162.7(d)(2).

This application was approved March 13, 1979, and the product has been assigned the EPA Registrtion No. 201–401. Pydrin Insecticide 2.4 Emulsifiable Concentrate is classified for restricted use in the control of pink bollworm, cotton leaf perforator, cotton bollworm, tobacco budworm, lygus bugs, whiteflies, and boll weevil in cotton. A copy of the approved lable and list of data references used to support registration are available for public inspection in the office of the Federal Register Section, Program Support Division (TS–757), Office of Pesticide Programs, Rm. 401 East Tower, 401 M St., SW, Washington, DC 20460. The data and other sceintific information used to support registration, except for the material specifically protected by Section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136) will be available for public inspection in accordance with Section 3(c)(2) of FIFRA, within 30 days after the registration date of March 13, 1979. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), EPA, 401 M St., SW, Washington, DC 20460. Such requests should: 1) identify the product by name and registration number and 2) specify the data or information desired.

Dated: April 16, 1979.

Edwin L. Johnson,
Deputy Assistant Administrator for Pesticide Programs.

[OPP–C30140R; FRL 1209–3]
[FR Doc. 79–12541 Filed 4–20–79; 8:45 am]
BILLING CODE 6560–01–M

FEDERAL COMMUNICATIONS COMMISSION

Exchange Network Facilities for Interstate Access (ENFIA)

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: The Commission granted relief requested in a Joint Motion approving and accepting an Interim Settlement Agreement (subject to further FCC proceedings) for Exchange Network Facilities for Interstate Access ("ENFIA"). An ENFIA tariff was filed last year to provide for local exchange facilities for specialized common carriers' MTS/WATS-"like" services. To avoid complex and protracted litigation of the merits of this tariff, the FCC conducted settlement negotiations among the interested parties. These negotiations resulted in the interim settlement agreement. The text of the Motion Agreement were published and public comment was solicited thereon, 43 FR 59129, December 19, 1978. The Commission's action accepting the agreement assures that MTS/WATS-"like" services can be offered to the public over the next three years (and for an additional two years if the FCC makes certain determinations in the future), without litigation of issues concerning compensation of local telephone companies for their role in these service offerings.

DATES: Non-Applicable.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: David A. Irwin or Michael S. Slomin, Policy and Rules Division (202–632–9342).

Memorandum Opinion and Order

Adopted: April 12, 1979.
Released: April 16, 1979.

By the Commission: Commissioner Washburn absent.

In the matter of Exchange Network Facilities for Interstate Access (ENFIA), CC Docket No. 78–371.

A. Introduction: 1. Before us for consideration are a Joint Motion and Interim Settlement Agreement filed by certain telecommunications common carriers, including specialized common carriers which offer services "like" the traditional telephone carriers' Message Telecommunications Service (MTS) and Wide Area Telecommunications Service (WATS),[1] and traditional telephone carriers. The Motion and Agreement, which resulted from public negotiations among the signing parties, attended by other interested members of the public and conducted under FCC sponsorship, are intended to provide a basis for compensating local telephone companies for use of their facilities by interstate specialized common carriers to form end-to-end interstate communications paths used in providing MTS/WAT-"like" services to the public. These services used to be offered almost exclusively by AT&T (and several larger Independent telephone companies) in participation with a number of other telephone companies. Now, pursuant to court decree, other specialized common carriers may provide these services as well.

2. Obviously, by signing the Motion and Agreement, the parties to the agreement have indicated that its result is acceptable to them during its term. Our consideration herein is not limited to these parties' individual interests; we are obligated to assess the public interest as it might be affected by the agreement. For this reason, we published the text of the Agreement and Motion, and invited comment thereupon in this proceeding. [2]

3. In response to our invitation, comments were filed by: Aeronautical Radio, Inc. (ARINC); Lincoln Telephone and Telegraph Compnay (Lincoln); National Association of Regulatory Utilities Commissioners (NARUC); the National Telecommunications and Information Administration of the U.S. Department of Commerce (NTIA); Satellite Business Systems (SBS); Telenet Communications Corporation (Telenet); Tymnet, Inc. (Tymnet); and United Telecom Services, Inc. (United).

[1] The stated scope of the agreement and the services which it is intended to encompass are quite complex and are discussed in detail below. Our use of the shorthand term "MTS/WATS-like" should not be construed as a failure to appreciate this point.

[2] *Request for Comments*, CC–10679, released December 15, 1978 by the Chief, Common Carrier Bureau in CC Docket No. 78–371, 43 FR 59129 (December 19, 1978).

Reply comments were timely filed by: ARINC; American Telephone and Telegraph Company (AT&T); Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO); and United State Independent Telephone Association (USITA). In addition, NITA filed a reply some six days late, accompanied by a motion seeking acceptance of this late-filed pleading. [3]

B. Background: 4. The issues now before us have their genesis in our decisions on MCI's "Execunet" service (and similar services provided by others), and in decisions of the United States Court of Appeals, District of Columbia Circuit, overruling our decisions in part.[4] In brief (without citations), the court concluded:

a. Certificates of convenience and necessity pursuant to Section 214 of the Communications Act, to be properly restricted to specific uses or services, must contain conditions imposed pursuant to a public interest finding under Section 214(c).

b. The certificates before the court were not so restricted under Section 214(c), although after due notice and an appropriate proceeding they could subsequently be restricted.

c. The Bell System (and by extension all local telephone companies) are obligated to interconnect their facilities with those of specialized common carriers to permit the latter to offer to the public any service permitted by their certificates of convenience and necessity, and specifically to offer services "like" MTS and WATS (*e.g.*, MCI's "Execunet" service).

Thus, we understand the court's ruling to be that unless and until we subsequently properly restrict the specialized common carriers' facility authorizations pursuant to Section 214(c), local telephone companies are under a legal obligation to interconnect their facilities with those of the specialized common carriers for the provision of interstate services, without regard to the specific services which the specialized common carriers may offer over such interconnected facilities.

5. While the Court of Appeals imposed an obligation to interconnect facilities, it did not speak to the compensation to which local telephone companies might be entitled for origination and termination of interstate services provided over their facilities by the specialized common carriers. In May, 1978, following the finality of the court's decisions, the Bell System telephone companies filed a new tariff with the FCC seeking to offer to the specialized common carriers "Exchange Network Facilities for Interstate Access" (ENFIA), at prices, terms and conditions stated therein. Numerous pleadings were then filed alleging that the proposed ENFIA tariff was unlawful, anticompetitive, and insufficiently based and supported. The issues raised were complex, and encompassed a variety of legal, economic and policy concerns fundamental to telecommunications ratemaking and regulation.

6. In the same time frame, and also in response to the court's decisions, we instituted an *MTS/WATS Market Inquiry* in CC Docket No. 78-72, [5] to determine, among other major questions, whether and to what extent (if any) facilities authorizations should be restricted under the public interest standard of Section 214(c) of the Communications Act. Issues in the *Market Inquiry* included issues raised in the pleadings filed concerning the ENFIA tariff.

7. While the pleadings concerning the Bell System's ENFIA filing were pending, and subsequent to our instituting the *Market Inquiry*, the Assistant Secretary of Commerce for Communications and Information (who heads the NTIA) urged the Commission to avoid time-consuming and *Market Inquiry*-duplicative complex litigation of the issues involved in ENFIA, and to attempt to seek a "reasonable interim solution" by making "every effort to achieve a negotiated settlement among the parties similar to the successful negotiations that took place under Docket 20099," by letter dated September 6, 1978. [6]

8. In view of the pendancy of the *Market Inquiry* which, in the future, is expected to adduce information on which the Section 214(c) public interest determinations can be made, and in view of the immediacy of the ENFIA tariff filing (which raised issues to be addressed during the course of the *Inquiry*), we accepted NTIA's suggestion and convened meetings among the interested parties to determine whether an interim negotiated settlement could be reached. In essence, recognizing that the issues of the *Inquiry* simply could not be resolved during the short time period available for resolving similar issues raised by the Bell System's ENFIA tariff filing, we convened the negotiations with the objective of arriving, if possible and if consistent with the public interest, at some form of a "rough justice" interim approach whereby the specialized common carriers could compensate local telephone companies for use of their exchange facilities when used to form part of the formers' interstate MTS/WATS-"like" offerings to the public. To this end, negotiations were conducted in public, with interested members of the public encouraged to attend and participate, with coverage by (trade) press, under the *aegis* of the Commission, and with participation by the Chief, Common Carrier Bureau and his staff. In attendance and participating were staff of NTIA as well.

C. The Motion and Agreement: 9. The text of the Joint Motion and the Interim Agreement were published both with our *Request for Comments* and in the Federal Register, [7] and for this reason will not be repeated here. However, we are highlighting several of the more important points agreed to as an introduction to the comments which we have received and our discussion of these comments and of the public interest.

10. First, the agreement is limited in scope to "Execunet/SPRINT-type interstate services" and to "any end-to-end MTS/WATS-type interstate service." These terms are further qualified to include specifically:

> [S]ervices which MCI Telecommunications Corp. presently markets as Execunet and Network Service and which Southern Pacific Communications Company presently markets as SPRINT IV and V and any other like service which may be offered by those two carriers or by any other OCC (other common carrier—generally a carrier other than a traditional telephone company) and which requires the use of the facilities aprovided for herein.

Thus, the stated scope of the agreement does not cover services which are connected with exchange facilities at only one end (*e.g.*, so-called "foreign exchange" (FX) and "common

[3] Since NTIA's late-filed pleading is a reply, to which no further pleadings are authorized, no party would be prejudiced by grant of NTIA's motion. We find that the public interest will be aided by consideration of NTIA's views, and accordingly we accept its reply.

[4] *Execunet*, 60 F.C.C. 2d 25 (1976), *rev'd in part sub. nom., MCI Telecommunications Corp.* v. *F.C.C.*, 561 F. 2d 365 (D.C. Cir., 1977) *cert. denied*, 434 U.S. 1040 (1978), 580 F. 2d 590 (D.C. Cir., 1978), *cert. denied*, —U.S.—, *47 U.S.L.W. 3368 (1978). See also, MCI Telecommunicqtions Corp.*, No. 75-1635 (D.C. Cir., filed May 11, 1978) denying a motion for further stay.

[5] 67 F.C.C. 2d 757 (1978).

[6] Docket No. 20099 implemented a legal obligation imposed in Docket No. 19896 to interconnect local telephone companies' facilities with those of specialized carriers. Here too, a legal interconnection obligation was imposed without addressing compensation to be received for this by the local telephone companies. See, *Bell System Tariff Offerings* (Docket No. 19896), 46 F.C.C. 2d 413 (1974) *aff'd sub. nom., Bell Tel. Co. of Pa.* v. *F.C.C.*, 558 F.2d 1250 (3d Cir.), *cert. denied*, 412 U.S. 382 (1974); *Facilities for Use by Other Common Carriers* (Docket No. 20099, terminated by a negotiated settlement), 52 F.C.C. 2d 727 (1975).

[7] Note 2, *supra*.

controlled switching arrangements" (CCSA) with off-network access links (ONAL)). Nor does it cover certain specialized non-voice uses of exchange facilities which use the exchange facilities to form portions of interstate "value added" data communications networks specially adapted to efficient transmission of digital data. [8]

11. Second, the agreement is intended to remain effective for an interim period no greater than five years, and will terminate at the end of three years if the Commission does not make certain findings (see para. 18, *infra.*), or at any time during its term if there is resolution of the issues of the *Market Inquiry* in that proceeding or in any other appropriate Commission proceeding, or on the effective date of any new federal legislation which specifies interconnection obligations and rights of the parties to the agreement.

12. Third, the parties recognize that there are existing interstate service offerings which, like MTS and WATS and the MTS/WATS-"like" services within the scope of the agreement, also use local telephone companies' exchange network facilities, but for which the local telephone companies are presently compensated on a different basis than for MTS/WATS or under the terms of the interim agreement. The parties suggest that questions of compensation of local telephone companies for use of their facilities for these other services (*e.g.*, FX, CCSA-ONAL, "value added" uses) are in need of resolution while the *Market Inquiry* is pending. To that end, the parties "recommend that the Commission should undertake the most expeditious proceeding possible to resolve" such questions.

13. Fourth, at the suggestion of the Chief, Common Carrier Bureau's representative, the parties reached agreement on compensation of local telephone companies for use of their exchange facilities for services within the scope of the agreement "as if":

> These charges could, after appropriate consideration by the Commission, be ultimately applied to other services which also utilize the local telephone company exchange facilities.

Thus, by its terms the agreement is not based on any changes being made in existing procedures for compensating local telephone companies for use of exchange facilities for these other services. Rather, the agreement is so structured that it need not be renegotiated if these procedures should be changed during the agreement's term.

14. Fifth, the agreement is patterned after the method by which local telephone companies are presently compensated for use of exchange facilities for traditional interstate MTS and WATS services. The basic methodology is one of compensating the local telephone companies for the costs they incur in carrying interstate MTS and WATS calls, and in adapting their facilities and procedures for carrying such calls. Historically, the major difficulty in arriving at the relevant costs has been that much of the local exchange plant consists of joint and common plant used indivisibly for both interstate and intrastate purposes, and the costs relevant to the interstate jurisdiction are not specifically identifiable. Thus, plant is apportioned under relative use concepts by augmenting the specifically identifiable costs by a factor intended to weigh in relevant interstate costs which are not specifically identifiable.[9] This cost apportionment process, termed "jurisdictional separations", is then used as a basis for division of interstate MTS and WATS revenues between the local telephone company and the interstate long-haul carrier (usually, but not exclusively, AT&T). Since this process is intended to result in compensation of the local telephone company in excess of specifically identifiable costs, it has loosely been described as "subsidization" of local telephone rates by interstate telephone rates (which reflect the additional costs assigned by the separations process).

15. However, the process does not necessarily result in compensation of local telephone companies in excess of their relevant costs. All that occurs is that the specifically identifiable costs (which, because of the joint and common nature of the plant are inevitably *less* than relevant costs) are increased by a factor to satisfy the overriding requirement that *all* relevant costs occasioned by interstate service—specifically identifiable or not—are compensated by the interstate jurisdiction.

16. It should be noted that local telephone companies will be receiving more compensation from the specialized common carriers under a compensation mechanism patterned after that used for traditional MTS and WATS, as compared with the presently effective manner in which they are leasing exchange connections. In the absence of specifically applicable interstate tariffs, or of private carrier-to-carrier contracts, the two specialized common carriers which are presently offering MTS/WATS-"like" services to the public, MCI and SPCC, have been connected to local telephone companies' exchange facilities under local exchange tariffs governing business customers. Although MTS/WATS-"like" calls are interstate end-to-end, and should be treated as interstate in their use of the telephone companies' exchange facilities for purposes of jurisdictional separation of the telephone companies' costs and revenue division, this has not been the case when facilities have been provided under local exchange tariffs. Local telephone companies' compensation for this use of exchange facilities is currently not patterned after the method under which they are compensated for similar interstate MTS and WATS services provided by traditional telephone companies. These two factors, jurisdictional treatment and compensation methodology, have generally resulted in less compensation of the local telephone companies than would result if they were compensated under the separations procedures or under the terms of the interim agreement now before us.

17. Sixth, in apparent recognition that a change from the present method of compensating local telephone companies for use of their exchange facilities under local business exchange tariffs, to a method patterned after the separations procedures, would have a serious and direct effect on the specialized common carriers and there customers, the interim agreement contemplates phasing in a new factor in excess of specifically identifiable costs which will result in additional charges. This phase-in is based on overall performance by the specialized common carriers in the MTS/WATS market. In essence, when specialized common carrier revenues from MTS/WATS-"like" services exceed certain predefined levels (defined in terms of aggregate revenues received by all specialized common carriers from MTS/WATS-"like" services), the percentage of payments in excess of specifically identifiable costs increases. This has the effect of assuring the impact of the specialized common carriers' offerings on existing MTS and WATS ratemaking and revenue division procedures, if any, will remain *de minimus* during the term of the agreement.

18. Although the entire agreement is intended to be effective for five years,

[8] The "value added" specialized common carriers are called "Composite Data Service Vendors" in the telephone companies' various interstate and intrastate tariffs.

[9] *Smith* v. *Ill. Bell Tel. Co.*, 282 U.S. 133 (1932). We note that although the Court adopted a relative use standard for apportionment of costs among the jurisdictions, it stated that "extreme nicety is not required, only reasonable measures being essential * * *", *id.*, 150.

the portion covering charges in excess of specifically identifable costs specifies this factor only for three years. Further Commission action is required to set into motion the remaining two years of the overall agreement's term by specifying percentages to be applicable for the remaining two years. Specifically, the parties have agreed that the specialized common carriers will phase-in paying the Separations Manual's factor above specifically identifiable costs (a traffic-sensitive cost/minute which is added to other specifically identifiable costs under the Manual) as follows:

Combined Revenues of all Specialized Common Carriers From MTS/WATS-"like" Services	Percentage of the Manual's Factor
Less than $110 million/year	35%
$110 to $250 million/year	45%
More than $250 million/year	55%

This section of the agreement terminates after three years from the effective date of the overall agreement. If the agreement is to remain effective for another two years, the Commission must find that it is reasonable and in the public interest to continue the agreement, and it must prescribe an appropriate level for payment above specifically identifiable costs by the specialized common carriers.[10]

19. Seventh, other costs which are specifically identifiable will be compensated in two components. The first component is contained in tariffs for "Voice Grade Central Office Connecting Facilities" (VGCOCF), which currently offer certain central office and exchange facilities for use by specialized common carriers.[11] The second component is an adjustment to the VGCOCF rate reflecting local switching and trunking, and jurisdictional treatment of accessing calls by patrons of MTS/WATS-"like" services. The local switching and trunking component is intended to reflect, in average form, the minutes of use/month of exchange lines (currently 3240 minutes/month in Bell System territories) and to reflect cost inflation (at a specified 5% a year rate).

20. Eighth, GTE Service Corporation, an entity owned and controlled by the holding corporation which also controls all of the GTE domestic local telephone companies, and which provides certain support services and advice to these sister corporations, has undertaken to "recommend to its domestic telephone operating affiliates" that they enter into a standard form contractual arrangement with specialized common carriers who seek ENFIA connections in GTE's service areas.[12] Attached to the interim agreement is a copy of the form contract which GTE Service Corporation will "recommend". This form tracks the Bell System's proposed tariffs implementing the interim agreement. It adopts Bell's percentages of the Separations Manual's factor in excess of specifically identifiable costs (35/45/55%). However, it does not establish the specifically identifiable VGCOCF and switching and trunking costs to be used in GTE's service areas. Rather, GTE indicates that these identifiable costs will be negotiated on an individual company basis, using the methodology used by the Bell System in arriving at its figures, but reflecting the costs incurred in GTE's territories.

21. Ninth, the other non-Bell, Independent telephone companies (some 1500 companies) which participated in the negotiations did so through three trade associations: United States Independent Telephone Association (USITA), National Telephone Cooperatives Association (NTCA), and Organization for the Protection and Advancement of Small Telephone Companies (OPASTCO). These associations agreed (like GTE) to recommend that their members provide ENFIA lines to specialized common carriers on a contractual basis, using the methodology used by the Bell System in arriving at its figures for specifically identifiable costs, but reflecting each Independent telephone company's specific costs.[13] In those cases where an Independent telephone company uses average toll settlement procedures, and does not have Separations Manual cents/minute data readily available because it does not use such data, amounts will be based on average Independent telephone industry data mutually acceptable to the telephone company and specialized common carrier involved. The trade associations did not agree to recommend specific percentages over specifically identifiable costs, leaving this as a matter to be negotiated by the telephone company and specialized common carrier involved.

22. And finally, tenth, the parties agreed to submit a Joint Motion to the Commission requesting: (1) Acceptance and approval of the agreement; (2) authorization for the Bell System to file its ENFIA tariffs to become effective on not less than one day's notice following release of a Commission order accepting and approving the agreement; (3) certain technical waivers of our rules (*e.g.*, on incorporation by reference, pagination, section designations, symbols and reference marks, withdrawal of tariffs, etc.); (4) wiaver of the Section 61.38 requirement that a new tariff be supported by certain detailed cost and demand data; and (5) to the extent necessary, if any, waiver of the information reporting requirements of the Commission's decisions in Docket No. 18128.

D. Comments and Replies: 23. The comments and replies which we received pursuant to our *Request for Comments* generally support the interim agreement as being in the public interest during its term, and they recommend that we allow it to become effective. No party advances any reason it should not be applied to the services within its stated scope, although there is some considerable discussion about the merits of extending the compensation methodology of the agreement to other services not within its scope (*e.g.*, to FX, CCSA–ONAL, and "value added" services).

24. NTIA states that allowing this agreement to become effective will avoid uncertainty, delay, litigation and expense, and that such would serve the public interest. It opines that effectuation of the agreement will smooth the path for specialized common carriers to offer and expand their Execunet-type services with a minimum of delay and disruption, that it will significantly improve the comptitive equality between these carriers and the traditionally long-haul interstate common carriers (chiefly, AT&T), while providing for payment of a sum in lieu of the revenues local telephone companies could expect to collect if the settlements and separation process were to apply to Execunet-type services. In view of an express concern that its comments not be construed as accepting the existing method of compensating local telephone companies for use of their facilities in interstate calling, NTIA urges that we not make a specific affirmative finding that the dollar terms and other conditions of the proposed settlement

[10] Under the agreement, as part of the support for their respective positions, traditional telephone companies are free to argue that the percentage should be increased to 100% after the initial three year term, and specialized common carriers are free to argue that this payment, if imposed at all, should be substantially reduced below levels agreed to during the initial three year term.

[11] The specialized common carriers reserve the right to oppose any future replacement for the currently-effective VGCOCF tariff offering.

[12] Carrier-to-carrier contracts, in lieu of tariffs, are filed with the Commission pursuant to Section 211(a) of the Communications Act. Under the terms of Section 201(a) of the Act, any such contract concerning "interconnection" remains subject to our review.

[13] The associations agreed to recommend these procedures to their member telephone companies as a reasonable way to develop ENFIA charges to specialized common carriers.

are correct, or form a satisfactory resolution of issues in the pending *Market Inquiry*. Rather, it urges that we conclude that approval of the agreement would serve the public interest on an interim basis. NTIA states its belief that no adequate basis exists at this time to make ultimate public interest determinations; it argues that only a full proceeding (such as the *Market Inquiry*) would produce such a basis.

25. With respect to services not within the scope of the interim agreement that also use local telephone compaines' exchange facilities, NTIA states its belief that such services are conceptually and analytically indistinguishable from Execunet-type services with respect to the appropriateness of their bearing a fair share of the interstate payments for local loop terminations. Furthermore, NTIA notes that these services appear to have a far greater potential for diversion of revenues from the interstate revenues pool [the mechanism whereby revenues are currently divided between local telephone companies and long-haul carriers, in relation to Separations Manual-derived costs]. It suggests that we direct the parties to the interim agreement to address themselves to these other services through a negotiation process, and if this does not prove fruitful that we convene a Joint Board or other appropriate proceeding on an expedited basis to address these other services.

26. The telephone companies who commented, Lincoln and United, express general agreement with the terms of the interim agreement. The urge that we recognize a right of non-signatory telephone companies to negotiate individual agreements with specialized common carriers for ENFIA terminations. United argues that paragraph 16 of the agreement reflects th non-signing Independent telephone companies' right to so negotiate, and to negotiate toward transitional percentages of the Separations Manual's factor in excess of specifically identifiable costs which differ from those agreed to by the Bell System and GTE companies (35/45/55%). In this regard, United indicates that it wants 100% of the factor immediately.2 14 Lincoln clearly wishes greater percentages than those agreed to by Bell and GTE, but it does not so specifically indicate that it expects 100% immediately. Moreover, Lincoln argues that the three year initial term of the agreement is excessive and not conducive to expediting resolution of the issues of the *Market Inquiry*.

27. ARINC (a major user of FX and CCSA–ONAL services), and SBS, Telenet and Tymnet (specialized common carriers which are presently connected with or contemplating connection to exchange facilities for FX/CCSA and "value added" services not within the scope of the agreement) argue strongly that those paragraphs of the agreement which suggest further action on services not within the agreement's scope should be rejected, or that in the alternative no changes should be made in compensation of local telephone companies for use of exchange facilities for these services until the conclusion of the *Market Inquiry*. ARINC argues that customers of private line services *which access exchange facilities* (FX and CCSA–ONAL) already adequately compensate local telephone companies for use of their facilities in conjunction with these services, that such customers should not be forced through a new compensation methodology to cross-subsidize other users of local exchange plant, and that the Commission cannot lawfully prescribe new non-cost based exchange network access charges for these services without full evidentiary proceedings under Section 205 of the Communications Act. [15]

28. Telenet and Tymnet ("value added" carriers using exchange network facilities for specialized digital services) each argue that their services are substantially different from MTS and WATS and the MTS/WATS-"like" services considered by the interim agreement, and their offerings do not raise the same types of problems if local telephone companies are compensated on a different basis. Tymnet argues further that prior to any changes in the compensation methodology for exchange access for these services, we must first determine to what extent a Federal-State Joint Board is required under Section 410 of the Communications Act, and the impact of the existing Separations Manual on such changes. Then, because in its view adequate notice had not been given in the past of such changes, we must issue either an order convening such a Joint Board, or a notice of proposed rulemaking, clearly delineating issues and affording all parties an opportunity to present their views. SBS (a domestic satellite carrier which, at least presently, does not contemplate offering MTS/WATS-"like" services, but which apparently does contemplate offering FX and CCSA–ONAL services), like ARINC, argues that any change in the existing compensation methodology for services not within the scope of the interim agreement should await the outcome of the *Market Inquiry* in order not to prejudge its stated issues.

29. NARUC does not address the substance of the agreement and confines its comments only to the procedures which it feels would be necessary if we were to seek changes in the existing methods of compensating local telephone companies for exchange access for those services which are not the subject of the agreement. NARUC argues that any change in the compensation methodology will impact upon and "perhaps necessitate a change in" the Separations Manual. In NARUC's view, this would therefore require a mandatory Federal-State Joint Board under Section 410(c) of the Communications Act.

30. In reply, AT&T, NTCA, OPASTCO, and USITA (all parties to the agreement), and NTIA (a non-signatory governmental participant) assert that paragraphs 4 and 5 of the agreement [16] reflect the parties' belief that we should expeditiously consider treatment of services other than MTS/WATS-"like" services which use local exchange facilities. All of these parties recognize and acknowledge that further proceedings would be required for such consideration. NTCA and OPASTCO (both trade associations representing the views of small Independent telephone companies and cooperative telephone companies in rural areas) assert that the challenged paragraphs were fundamental to their participation in the agreement and that we cannot substantially alter the existing agreement without further participation of all parties.

E. Discussion: 31. As we stated at the outset, we view our obligation as one of assessing the public interest and not the signing parties' and commenting parties' more individual interests. This assessment cannot be exact and calculated with mathematical precision, and must weigh in factors such as avoidance of protracted litigation, creation of some degree of certainty in hitherto-unchartered regions of carrier-to-carrier compensation which have historically been the subject of private

[14] United argues that there should be no discrimination between compensation it receives for exchange access for traditional MTS and WATS, and compensation it receives for exchange access for MTS/WATS-"like" services. It is therefore apparent that United is seeking 100% immediately.

[15] Moreover, ARINC argues that any such proceeding must provide for separation of the Common Carrier Bureau from decision-making since Bureau staff suggested that the parties negotiate "as if" these other services were under a compensation mechanism similar to that of traditional MTS and WATS and MTS/WATS-"Like" services.

[16] These paragraphs reflect the parties' statements on services not within the scope of the agreement. *See* paras. 12–13 above.

negotiation among carriers, and procedurally conducive to the ends of justice.

32. Traditional MTS and WATS have been rendered to the public by a partnership of local telephone companies (who have a state-franchise monopoly on local exchange facilities) and interstate long-haul carriers (most commonly the Long Lines Department of AT&T). Under the principles of *Smith* v *Ill. Bell Tel. Co.*,[17] local telephone companies' plant has been apportioned under principles of relative usage between the local jurisdiction and the interstate jurisdiction, and costs allocated to the latter have formed a cost basis both for interstate rates (revenues derived from interstate users) and for dividing revenues received from interstate calls between the long-haul carriers and the local telephone companies (the local telephone companies' compensation for use of their facilities to complete interstate MTS and WATS calls). The cost apportionment process itself is prescribed [18]—at least in overall accounting principles—by a Separations Manual arrive at through a regulatory partnership between state regulators and the FCC, through the mechansim of a federal-state Joint Board convened under Section 410 of the Communications Act. It forms a basis for regulatory review of interstate rates by the FCC (based on the costs approtioned to the interstate jurisdiction by the Manual) and for review of intrastate rates by state regulators (based on costs approtioned to the intrastate jurisdiction by the Manual). On the federal side, the Manual itself is incorporated in Part 67 of the FCC's Rules, 47 CFR 67.1; depending on the jurisdiction involved it may or may not form part of a state regulatory agency's rules or requirements, however it normally governs state regulators' ratemaking proceedings.[19] The Manual itself, however, does not specify how revenues are to be divided between the interstate and intrastate carriers involved; this matter is normally governed by negotiated carrier-to-carrier contracts.

33. When the U.S. Court of Appeals, D.C. Circuit, ruled that specialized common carriers could use their facilities to offer MTS/WATS-"like" services, a new dimension, competition, was introduced to the traditional manner in which MTS/WATS services were offered to the public. Unlike the historical case, local telephone companies have no particular incentive to *want* to participate in the competitive provision of MTS/WATS-"like" services. Their customers are already able to place MTS/WATS calls through existing interconnection of the local telephone companies' facilities with lon-haul carriers. Unless new long-haul carriers compensate them at least at the same level as traditional ones, local telephone companies have little incentive to encourage diversion of traffic from existing MTS/WATS services to new MTS/WATS-"like" services.

34. However, the court made it quite clear that regardless of the local telephone companies' incentives, they are local monopolists controlling access of the specialized common carriers to their market, and they must provide interconnection to allow MTS/WATS-"like" services to be offered to the public.[20] In the face of this decision, AT&T and the Bell System telephone companies chose to offer interconnection on a tariff basis, a permissible means of doing so but by no means the only one.[21] Consistent with this decision, they filed the proposed ENFIA tariffs with the Commission. The non-Bell Independent telephone companies filed nothing.

35. Numerous pleadings were then filed seeking rejection, or suspension and hearing leading to Commission prescription of the terms, conditions and prices in the ENFIA tariffs. Each of these pleadings raised issues which are involved in the *Market Inquiry*. Moreover, these issues (*e.g.*, compensation, public policy and social goals of ratemaking, "subsidization", competitive constraints, etc.) for reasoned ultimate decision-making will require evidence that presently simply does not exist. At that time we had recently sought comment from the public on the scope and nature of issues which we should address in the *Market Inquiry*, and we were receiving voluminous filings concerning not the answers, but the questions to ask. It was quite clear that any process leading to prescription of the ENFIA rates could well transcend the *Market Inquiry* itself. But, it was equally clear that the ENFIA issues had to be resolved expeditiously. The specialized common carriers had a court-granted legal right to secure interconnection. Absent some determination as to the compensation to which local telephone companies would be entitled for this, at best protracted litigation seemed likely to ensue.[22] For this reason, it was appropriate for us to convene negotiations, as suggested by NTIA, with a view towards determining whether some interim agreement, consistent with the public interest but short of the rigor necessary to support FCC prescription, would be possible.

36. The interim agreement is not represented as cost-based *in toto*, but on its face it is no less so than the historical MTS/WATS compensation mechanism it is patterned after—jurisdictional separations-established costs, and private carrier-to-carrier agreements specifying revenue division. The specifically identifiable costs which underlie part of agreement's charges (specifically, the VGCOCF rate and adjustments to it reflecting switching and trunking costs, and jurisdicitional treatment of accessing calls, *see* para. 19 above) are based largely on another tariff offering by the Bell System telephone companies, or on alternative existing compensation mechanisms negotiated for other purposes by the Independent telephone companies. The VGCOCF rate was, at the time of the agreement herein, established several years ago through negotiations which terminated Docket No. 20099.[23] The Bell System is now in the process of refiling this tariff with cost support. The various parties to the interim agreement have retained their right to challenge any new rates for the VGCOCF, thus it is reasonable to conclude that we will be able to determine its lawfulness separately, aided by the parties to the interim agreement in reaching such determination,[24] and need not do so here. Adjustments to the VGCOCF are cost-developed in the agreement, and while this development may not be supported with the degree of precision which we might require in a formal rate proceeding, the development does not appear unreasonable on its face. We will therefore approve these components of the interim agreement, subject to any

[17] Note 9, *supra*.

[18] 47 CFR 67.1.

[19] In at least one case, a state regulatory agency (in this case that for the District of Columbia) chose to employ its own apportionment procedures for intrastate regulatory review of ratemaking. *See, Re The Chesapeake & Potomac Tel. Co.*, 4 P.U.R. 4th 1 (1974).

[20] *MCI Telecommunications Corp.* v. *F.C.C.*, 580 F. 2d 590, 594–98 (D.C. Cir., 1978), *cert. denied*,—U.S.—, 47 U.S.L.W. 3368 (1978).

[21] We have required tariffs for the somewhat analgous case of interconnection for FX and CCSA; conversely, for traditional MTS and WATS interconnection, private contracts have long been used.

[22] Perhaps the best analytic label to place on these circumstances is one in the nature of quasi-contract, or a contract implied in law, where the local telephone companies might be entitled to reasonable compensation (*quantum meruit*).

[23] Note 6, *supra*.

[24] The parties themselves contemplated this. They have merely incorporated into the interim agreement and the proposed tariffs attached thereto the VGCOCF rates from an external source.

ultimate determinations we may make on them in the future.

37. The remaining component of the interim agreement's ENFIA rate is a factor in excess of specifically identifiable costs which is intended to track the Separations Manual's similar factor. It is not, on its face, cost-supported, and it is in principle no more and no less cost-based than the Separations Manual's similar factor; since it is set at a percentage of the Manual's factor, it is different. As the Manual itself is a product of federal and state regulatory agencies, its factor must be accepted for the purposes of our determinations herein as at least *prima facie* reasonable as a means of apportioning costs which are not specifically identifiable, as one means of meeting the overriding objective that all costs, identifiable or not, be apportioned. If compensation of local telephone companies were uniformly based solely on this factor, the factor might therefore establish a *prima facie* test of reasonableness for compensation of local telephone companies for ENFIA connection as well.

38. However, for several reasons the Separations Manual's factor should not be used for ENFIA compensation unaltered in all cases. First, the Manual's factor assumes that certain capabilities and functions are provided by the local telephone company's facilities for use in connection with MTS and WATS calls, for which they are entitled to compensation; these functions are not provided in connection with MTS/WATS-"like" calls in an ENFIA interconnection.[25] Second, local telephone companies are not compensated precisely on the basis of the Manual's apportionment of costs; their compensation is determined by privately negotiated carrier-to-carrier contracts. Thus, while the Manual's factor might be *prima facie* reasonable, it does not establish *prima facie* reasonable compensation for interconnection to support MTS/WATS-"like" services.

39. Moreover, the Manual's figure does not actually establish relevant costs. It is an imprecise attempt to apportion relevant costs which are not specifically identifiable. In view of this imprecision, and departures from it in arriving at actual realized compensation by local telephone companies for use of their facilities in connection with traditional MTS and WATS, a fixed percentage departure from the Manual's factor (as proposed in the interim agreement) does not on its face establish the result as unreasonable or arbitrary. The agreement's proxy for non-specific costs (a changing percentage of the Manual's factor) is no less reasonable than the Manual's similar proxy; it is merely a lower dollar amount, which may reflect lower relevant costs for MTS/WATS-"like" use of exchange facilities than for MTS and WATS uses of the exchange.[25a] The simple fact is that we do not have available the relevant costs for MTS/WATS-"like" uses, or for traditional MTS and WATS uses, of local telephone companies' exchange facilities.[26] The *Market Inquiry* will, *inter alia*, seek to develop information on economically sound principles and methodologies for arriving at these costs.

40. Moreover, there is a phasing-in of the size of this additional factor in excess of specifically identifiable costs, as a function of performance of MTS/WATS-"like" services (overall) in the MTS/WATS market. This achieves a balancing of several objectives. First, it permits the specialized common carriers who are today paying less for existing interconnected service to phase in increased payments, which may be passed on to their customers in the form of increased rates, or absorbed in whole or in part. Second, it has the effect of assuring that impact of the specialized common carriers' MTS/WATS-"like" offerings on existing MTS and WATS ratemaking and revenue division procedures, if any, will remain *de minimis* during the term of the agreement.[27]

41. In view of the foregoing, we will allow this component of the ENFIA interim agreement, and tariffs and contracts which implement it. We do not have evidence available to us to determine whether, and to what extent, the specific compensation which local telephone companies will receive under the negotiated 35/45/55% fractions of the Separations Manual's factor are cost-based or desirable in the public interest.[28] Those parties to this proceeding who are in unique possession of evidence which could tend to demonstrate the relationship of negotiated compensation to relevant costs have not come forward with any such evidence; indeed, no comments were filed challenging the agreement's validity as applied to the MTS/WATS-"like" services within its scope.

42. In sum, we approve the negotiation process and the agreement it resulted in as being a reasonable means of avoiding complex and protracted litigation of hotly contested issues among historically litigious parties, as conducive to the ends of justice, and therefore, at least for the interim, as in the public interest. As was noted by the parties and in comments herein, the settlement affords an expeditious and acceptable compromise of differences on matters relating to methodologies, rate levels and rate components which would otherwise necessitate substantial time, expense and effort to resolve through formal Commission processes (and likely appellate review). Thus, we are allowing tariffs and contracts which implement the agreement to be filed, subject to our discussion of the independent nature of the VGCOCF component. If the agreement is to continue in effect beyond its initial three year term, we must prescribe compensation in excess of specifically identifiable costs (see para. 18 above). Since any such prescription proceeding is likely to be lengthy, we will issue a further order determining whether, and on what basis, any such rescription should issue.[29] Two additional matters merit further discussion.

F. "Other Services": 43. Virtually all of the controversy in filed comments concerns language in the agreement that certain services *not the subject of the agreement itself* merit an expeditious examination in view of a heightened awareness of issues concerning compensation of local telephone companies for use of exchange facilities, brought about by the ENFIA tariff filing and by institution of the *Market Inquiry*. Parties to the agreement covered the contingency that changes may occur to existing compensation methodologies for these other services (*e.g.*, FX, CCSA–ONAL, "valued added" uses) during the agreement's term, thereby making subsequent renegotiation of the agreement unnecessary in the event of any such changes.

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[25] *E.g.*, channel noise characteristics, transmission of rotary pulse dialing signals, call billing signaling, ability to complete calls with only ten digits. These differences between traditional MTS and WATS, and the MTS/WATS-"like" services were briefed in the Court of Appeals by MCI and SPCC.

[25a] *Id.*

[26] The Separations Manual establishes only a mathematical technique for attempting to roughly determine the relevant costs involved, by apportionment of the costs on the carriers' books.

[27] The FCC's 1976 *Statistics of Communications Common Carriers* reports that revenues received by traditional telephone companies in 1976 (the last year for which such figures are currently available) were some $18 billion in toll revenues, and $37 billion in total revenues. This should be compared with the total revenues from competitive MTS/WATS-"like" offerings contemplated in the interim agreement, around $0.25 billion.

[28] For that matter, we do not have evidence sufficient to determine whether the Manual's factor, arrived at in 1970, is today in the public interest. Presumably, it must be treated as *prima facie* reasonable as it is lawfully part of our rules.

[29] We specifically do not wish to foreclose the possibility that the *Market Inquiry* proceeding may be an appropriate vehicle for any such prescription, or may render it moot.

44. Strictly speaking, comments which urge that no changes be made for these *other* services are irrelevant to this proceeding. [30] The traditional and specialized common carriers which are parties to the agreement cannot make any such changes themselves as it appears that the Separations Manual might require either change or interpretation to effectuate any such changes. Since the Manual is part of our rules, some form of rulemaking or interpretive proceeding would appear necessary. We intend to study the existing compensation mechanisms for local telephone companies whose facilities are used in connection with the "other services" discussed in the agreement (para. 12 above) in light of our heightened awareness of these matters, brought about by our consideration of ENFIA, and in the future we will be able to determine whether, and under what procedures, any changes should be made.

G. Independent telephone Companies:

45. The only non-Bell Independent telephone company which is directly party to the agreement is GTE. It has agreed to "recommend" to its sister corporations in the General System that they follow the methodology of the agreement, using their own unique specifically identifiable costs. Moreover, GTE proposes using a carrier-to-carrier contract mechanism and not a tariff, apparently in recognition that Section 203 of the Communications Act may preclude connecting carriers from filing tariffs with the Commission. Further, GTE specifically agreed to use the same percentages of the Separations Manual's factor (35/45/55%) as did Bell.

46. Other Independent telephone companies participated via their trade associations, who agreed to recommend that their member telephone companies follow the methodology of the agreement, and like GTE use their own unique specifically identifiable costs. However, they also agreed to recommend to their members that they individually negotiate with providers of MTS/WATS-"like" services as to the percentage to be used of the Separations Manual's factor. One such Independent telephone company, United, has commented to the effect that it will "negotiate" towards 100% immediately, notwithstanding that Bell and General will accept 35–55% over the next three years, depending on market penetration. This is not exactly our idea of negotiation, particularly when a monopolist local telephone company possesses the power to exclude a competitor from the local market. [31]

47. We view local telephone companies' obligation to interconnect as a legal obligation which has been imposed by the court. Since the services involved here are interstate Execunet-type MTS/WATS-"like" services from one end to the other, they are within our jurisdiction under Section 201(a) of the Communications Act, a section which gives us authority to determine the terms, prices and conditions of carrier-to-carrier interconnection for MTS/WATS-"like" services. Potentially, we may face some 1500 such determinations if the 1500 non-signatory Independent telephone companies fail to negotiate mutually acceptable interconnection agreements with providers of MTS/WATS-"like" services, which would represent an extreme burden on our limited regulatory resources.

48. In view of the fact that the interim agreement stipulates specific rates or methods of arriving at rates (in the case of GTE) for interconnection to reach some 80% of the nation's telephones, we will operationally test any complaint under Section 201(a) in relation to the principles of the agreement. In accordance with the agreement, Independent telephone companies remain free to negotiate to different costs than the Bell System for the specifically identifiable cost components, and to negotiate to different percentages of the Separations Manual's factor in excess of specifically identifiable costs than agreed to by Bell and GTE. However, any departures from the agreement's terms as they apply to GTE will be required to be justified. Our overriding decisional principle will be that the court has already imposed an obligation to interconnect, and the local telephone company is entitled solely to reasonable compensation (*quantum meruit*) for this contract implied in law. Further, in view of the serious competitive ramifications of a refusal by a local telephone company to interconnect during the pendency of negotiations with a specialized common carrier, we are prepared, where appropriate, to issue interim orders and otherwise appropriately prosecute cases. Finally, we will impose administrative sanctions under the Communications Act where appropriate.

H. Order: 49. In view of the foregoing, It is hereby ordered, pursuant to Sections 1, 4(i), 4(j), 201(a) and 211 of the Communications Act of 1934 as amended, That:

a. To the extent indicated herein, we grant the relief requested in the Joint Motion approving and accepting the Interim Settlement Agreement, subject to further proceedings.

b. Tariffs may be filed on not less than one day's notice implementing the Joint Motion and Interim Settlement Agreement.

c. Carrier-to-carrier contracts may be filed implementing the Joint Motion and Interim Settlement Agreement.

50. It is further ordered, pursuant to Sections 211 and 218 of the Communications Act of 1934 as amended, That any carrier-to-carrier contract for the provision of exchange network facilities for interstate access for MTS/WATS-"like" services shall be filed with the Commission's offices in Washington, D.C. and shall be available for public inspection.

To the extent that any such contract uses terms and methodologies embodied in the Interim Settlement Agreement, as they are applied therein to GTE, such terms and methodologies may be acknowledged in any such filing and need not be repeated.

51. It is further ordered, pursuant to Sections 4(i) and 4(j) of the Communications Act of 1934 as amended, That §§ 61.16, 61.38, 61.54, 61.55(e), 61.58, 61.59, 61.71, 61.74, 61.94 and 61.112 of the FCC's Rules and Regulations are hereby waived to the extent necessary to implement paragraph 49 above.

52. it is further ordered, pursuant to Sections 1, 4(i), 4(j) and 201(a) of the Communications Act of 1934 as amended, That this proceeding shall remain open, and that this proceeding, and the Interim Settlement Agreement during its term, are subject to further commission order.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[CC Docket No. 78-371; FCC 79-222]

[FR Doc. 79-12417 Filed 4-20-79; 8:45 am]

BILLING CODE 6712-01-M

[30] The parties' precatory language is, of course, not binding on us. Similarly, the Common Carrier Bureau's suggestion that the agreement accommodate the contingency of changes which might be made during its term represents no conclusion in any manner as to the merits of such changes. Thus, we reject ARINC's argument that the Bureau's suggestion represents prejudgment of the merits by the Bureau's staff.

[31] If United does not interconnect with a specialized common carrier in United's monopoly service area, the specialized carrier cannot do business in that area. It is dependent on the monopoly carrier's exchange facilities to reach its customers.

FEDERAL MARITIME COMMISSION

Allied Chemical International Corp. v. Farrell Lines, Inc.; Filing of Complaint

Notice is given that a complaint filed by Allied Chemical International Corp.

against Farrell Lines, Inc. was served April 16, 1979. Complainant alleges that it has been subjected to payment of rates and charges for transportation in excess of those lawfully applicable, in violation of section 18(b)(3) of the Shipping Act, 1916.

Hearing in this matter, if any is held, shall commence on or before October 16, 1979. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,
Secretary.

[Docket No. 79-44]
[FR Doc. 79-12388 Filed 4-20-79; 8:45 am]
BILLING CODE 6730-01-M

Merck, Sharp & Dohme International v. Mitsui O.S.K. Lines, Ltd.; Filing of Complaint

Notice is given that a complaint filed by Merck, Sharp & Dohme International against Mitsui O.S.K. Lines, Ltd. was served April 16, 1979. Complainant alleges that it has been subjected to payment of rates and charges for transportation in excess of those lawfully applicable, in violation of section 18(b)(3) of the Shipping Act, 1916.

Hearing in this matter, if any is held, shall commence on or before October 16, 1979. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,
Secretary.

[Docket No. 79-42]
[FR Doc. 79-12389 Filed 4-20-79; 8:45 am]
BILLING CODE 6730-01-M

Merck, Sharp & Dohme International v. Japan Line, Ltd.; Filing of Complaint

Notice is given that complaint filed by Merck, Sharp & Dohme International against Japan Line, Ltd. was served April 16, 1979. Complainant alleges that it has been subjected to payment of rates and charges for transportation in excess of those lawfully applicable, in violation of section 18(b) (3) of the Shipping Act, 1916.

Hearing in this matter, if any is held, shall commence on or before October 16, 1979. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

Francis C. Hurney,
Secretary.

[Docket No. 79-43]
[FR Doc. 79-12390 Filed 4-20-79; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. § 1843(c)(8)) and section 225.4(b)(1) of the Board's Regulation Y (12 C.F.R. § 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than May 9, 1979.

A. *Federal Reserve Bank of Philadelphia*, 100 North 6th Street, Philadephia, Pennsylvania 19105:

The Girard Company, Bala Cynwyd, Pennsylvania (finance and leasing activities; national): to engage, through its subsidiaries, Girard Leasing Corporation and Omnilease Corporation, in leasing personal property and equipment on a full pay-out basis and acting as agent, broker, or advisor in leasing such properties; acting as agent, broker or advisor in the formation of (limited) partnership arrangements to engage in full pay-out leasing transactions and participating in such partnership transactions; and acting as agent, broker or advisor in, and acquiring interests in, conditional sales financing transactions. These activities would be conducted from an office in King of Prussia, Pennsylvania, and the geographic area to be served is national.

B. *Federal Reserve Bank of Chicago*, 230 South LaSalle Street, Chicago, Illinois 60690:

Heritage Wisconsin Corporation, Milwaukee, Wisconsin (trust company activities; Wisconsin): through its subsididary, Heritage Trust Company, to succeed to and be substituted for the Heritage Bank Whitefish Bay as to all fiduciary powers, rights, duties, privileges, and liabilities of the bank in its capacity as fiduciary for all estates, trusts, guardianships, and other fiduciary relationships of which the bank is now serving as fiduciary, to the extent permitted by the Board's Regulation Y; and engage in the conduct of all of the routine activities involved in the administration of fiduciary accounts. These activities would be conducted from the bank's premises in Whitefish Bay, Wisconsin, and the geographic areas to be served are Whitefish Bay and the surrounding northern suburban communities.

C. *Federal Reserve Bank of Kansas City*, 925 Grand Avenue, Kansas City, Missouri 64198:

1. Colorado National Bankshares, Inc., Denver, Colorado (finance activities; Colorado, Wyoming, Utah, New Mexico, Nebraska, Montana, Kansas): to engage, through its subsidiary, Colorado National Leasing, Inc., in making, acquiring, arranging, and servicing loans and other extensions of credit such as would be made, for example, by a finance company or a factoring

company, including loans secured by equipment, machinery, and other similar business property, and conditional sales agreements, chattel paper, and other obligations secured by such equipment, machinery, and other similar business property. These activities would be conducted from an office in Denver, Colorado, and the geographic areas to be served are the seven states listed in the caption to this notice.

2. Mid-Continent Corporation, Leadville, Colorado (industrial bank and insurance activities; Colorado): through its subsidiary, Mid-Continent Industrial Bank, to operate as an industrial bank; and to engage in the sale of life and accident and health insurance directly related to its extensions of credit. These activities would be conducted from an office in Leadville, Colorado, and the geographic areas to be served are Lake, Eagle, and Summit Counties, Colorado.

3. Republic Bancorporation, Inc., Tulsa, Oklahoma (industrial loan company activities; Oklahoma): through its subsidiary, Republic Trust and Savings Company, to operate as an industrial loan company, primarily engaged in the issuance of passbook type and thrift certificates and making secured loans to commercial and consumer customers. These activities would be conducted from an office in Tulsa, Oklahoma, and the geographic area to be served is Tulsa.

D. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, April 11, 1979.

Edward T. Mulrenin,
Assistant Secretary of the Board.

[FR Doc. 79-12506 Filed 4-20-79; 8:45 am]
BILLING CODE 6210-01-M

Bank Holding Companies; Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage in *de novo* (or continue to engage in an activity earlier commenced in *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than May 16, 1979.

A. *Federal Reserve Bank of New York,* 33 Liberty Street, New York, New York 10045:

U.S. Trust Corporation, New York, New York (trust company and investment advisory activities; California): to engage, through its subsidiary, U.S. Trust Company of California, in activities that may be carried on by a trust company, including activities of a fiduciary, investment advisory, agency, or custodian nature. These activities would be conducted from an office in Beverly Hills, California, and the geographic area to be served is California.

B. *Federal Reserve Bank of Chicago,* 230 South LaSalle Street, Chicago, Illinois 60690:

Michigan National Corporation, Bloomfield Hills, Michigan (trust company and investment advisory activities; Michigan): through its subsidiary, Michigan National Investment Corporation, to perform or carry on any one or more of the functions or activities that may be performed or carried on by a trust company, including activities of a fiduciary, agency, or custodian nature; and to act as investment or financial advisor to the extent of providing portfolio investment advice to any person. These activities would be conducted from an office in Clawson, Michigan, and the primary geographic area to be served is the lower peninsula of Michigan, principally those cities and counties in which Applicant's affiliate banks are located. This is a modification of a notice published earlier (44 FR 17,579 (1979)).

c. *Federal Reserve Bank of San Francisco,* 400 Sansome Street, San Francisco, California 94120:

1. Bankamerica Corporation, San Francisco, California (finance and insurance activities; Delaware, Maryland, Pennsylvania): to engage, through its subsidiaries, FinanceAmerica Corporation and FinanceAmerica Mortgage Services Inc., in making or acquiring loans and other extensions of credit such as would be made or acquired by a finance company, including making consumer installment loans, purchasing installment sales finance contracts, making loans, including loans of a commercial finance nature, and other extensions of credit to small businesses, and making loans secured by real and personal property; servicing loans and other extensions of credit; and offering life, property, and accident and disability insurance directly related to their extensions of credit. These activities would be conducted from an office in Newark, Delaware, and the geographic areas to be served are Delaware, Maryland, and Pennsylvania.

2. Bankamerica Corporation, San Francisco, California (finance and insurance activities; Massachusetts, Rhode Island): to engage, through its subsidiary, FinanceAmerica Corporation of Massachusetts, in making or acquiring loans and other extensions of credit such as would be made or acquired by a finance company, including making consumer installment loans, purchasing installment sales finance contracts, making loans and other extensions of credit to small businesses, and making loans secured by real and personal property; and offering life and property insurance directly related to its extensions of credit. These activities would be conducted from an office in Swansea, Massachusetts, and the geographic areas to be served are Massachusetts and Rhode Island. This application is for the relocations of an existing office.

3. Bankamerica Corporation, San Francisco, California (trust company activities; national): to engage, through its subsidiary, BankAmerica Securities Services Company of New York (a limited purpose trust company), in performing or carrying on the following functions or activities that may be carried on by a trust company: acting as transfer agent (main, sub-, or co-), fiscal agent, shareholders servicing agent, registrar, dividend disbursing agent, clearing agent, custodian, paying agent, authenticating agent, escrow agent, and recordkeeping agent; providing lockbox service and safekeeping service; acting as trustee in connection with any such services; and activities and services related to the foregoing. These activities

would be conducted from an office in New York, New York, and the geographic area to be served is national.

D. *Other Federal Reserve Banks:* None.

Board of Governors of the Federal Reserve System, April 17, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-12509 Filed 4-20-79; 8:45 am]

BILLING CODE 6210-01-M

NB Corp.; Acquisition of Bank

NB Corporation, Charlottesville, Virginia, has applied for the Board's approval under Section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 percent of the voting shares of the successor by merger to State Bank of Keysville, Keysville, Virginia. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Richmond. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than May 8, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, April 11, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-12507 Filed 4-20-79; 8:45 am]

BILLING CODE 6210-01-M

First National Cincinnati Corp.; Acquisition of Bank

First National Cincinnati Corporation, Cincinnati, Ohio, has applied for the Board's approval under Section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 100 per cent (less directors' qualifying shares) of the voting shares of The Commercial and Savings Bank of Gallipolis, Gallipolis, Ohio. The factors that are considered in acting on the application are set forth in Section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Cleveland. Any person wishing to comment on the applications should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than May 14, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, April 13, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-12510 Filed 4-20-79; 8:45 am]

Billing Code 6210-01-M

Suburban Bancorp, Inc.; Formation of Bank Holding Company

Suburban Bancorp., Inc., Palatine, Illinois, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of Palatine National Bank, Palatine, Illinois. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than May 11, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, April 11, 1979.

Edward T. Mulrenin,

Assistant Secretary of the Board.

[FR Doc. 79-12508 Filed 4-20-79; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Notice of Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on April 17, 1979. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the Federal Register is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed FMC request are invited from all interested person, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before May 11, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275,3532.

Federal Maritime Commission

The FMC requests an extensive without change clearance of a voluntary letter addressed to manufacturers who are members of the American Automobile Association requesting information on the cubic measurements and weights of new and used automobiles. The information received from these requests is compiled into a guide entitled "Automobile Manufacturers' Measurements." The guide is used by carriers transporting automobile in the domestic offshore trade and is designed to assist their compliance with the Commission's rule requiring automobile weight and measurements contained in 46 CFR 531.5(b)(8)(xiv). The FMC estimates approximately 20 submissions are recieved annually and that respondent burden averages 7.5 minutes per submission.

John M. Lovelady,

Assistant Director, Regulatory Reports Review.

[FR Doc. 79-12458 Filed 4-20-79; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Model Adoption Legislation and Procedures Advisory Panel; Meeting

The Model Adoption Legislation and Procedures Advisory Panel was established by the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (Pub. L. 95-266, Title II, Section 202) to advise and assist the Secretary of HEW in the review of current conditions, practices and laws relating to adoption, with special reference to their effect on facilitating or

impeding the location of suitable adoptive homes for children who would benefit by adoption and the completion of suitable adoptions for such children.

The Panel will propose to the Secretary model adoption legislation and procedures not later than twelve months after its appointment.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 95–463, 5 U.S.C. app. 1, sec. 10, 1976) that the Panel will hold a meeting on June 11, 12, and 13, 1979 from 9:00 a.m. to 5:00 p.m., Room 339A, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, D.C.

At this meeting the Panel will consider and approve an agenda for the three day meeting. The Panel will discuss the fourth draft of the model adoption legislation and the second draft of the model adoption procedures. The Panel will meet in plenary session throughout the three day meeting.

Further information on the Panel may be obtained from Mrs. Diane D. Broadhurst, Executive Secretary, Model Adoption Legislation and Procedures Advisory Panel, Children's Bureau, P.O. Box 1182, Washington, D.C. 20013, telephone (202) 755–7730. Model Adoption Legislation and Procedures Advisory Panel meetings are open for public observation.

April 17, 1979.

Arnold Sampson,

HDS Committee Management Officer.

[FR Doc. 79-12545 Filed 4-20-79; 8:45 am]

BILLING CODE 4110-92-M

Model Adoption Legislation and Procedures Advisory Panel; Meeting

The Model Adoption Legislation and Procedures Advisory Panel was established by the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978 (Pub. L. 95–266, Title II, Section 202) to advise and assist the Secretary of HEW in the review of current conditions, practices, and laws relating to adoption, with special reference to their effect on facilitating or impeding the location of suitable adoptive homes for children who would benefit by adoption and the completion of suitable adoptions for such children. The Panel will propose to the Secretary model adoption legislation and procedures not later than twelve months after its appointment.

Notice is hereby given pursuant to the Federal Advisory Committee Act (Pub. L. 95–463, 5 U.S.C. app. 1. sec. 10, 1976) that the Panel will hold a meeting on May 7, 8 and 9, 1979, from (9:00 a.m. to 5:00 p.m., Room 5559, Donohoe Building, 400 6th Street SW., Washington, D.C.

At this meeting the Panel will consider and approve an agenda for the three day meeting. The Panel will discuss the third draft of the model adoption legislation and the second draft of the model adoption procedures. The Panel will meet in plenary session throughout the three day meeting.

Further information on the Panel may be obtained from Mrs. Diane D. Broadhurst, Executive Secretary, Model Adoption Legislation and Procedures Advisory Panel, Children's Bureau, P.O. Box 1182, Washington, D.C. 20013. Telephone (202) 755–7730. Model Adoption Legislation and Procedures Advisory Panel meetings are open for public observation.

April 17, 1979.

Arnold Sampson,

HDS Committee Management Officer.

[FR Doc. 79-12544 Filed 4-20-79; 8:45 am]

BILLING CODE 4110-92-M

National Institute of Education

Center for Bilingual Research Major Assistance Award for Creation and Operation

The Director of NIE is preparing to announce a competition for a major assistance award for the creation and operation of a Center for Bilingual Research. This award will be long-term support for fundamental research on issues in bilingual education. The Center is expected to produce knowlege that will help not only in education of bilingual children, but also in promoting a clearer understanding of bilingualism in the society at large.

Because the Institute will have substantial involvement in the performance of this activity, the Institute has determined, in accordance with the requirements of the Federal Grant and Cooperative Agreement Act (Pub. L. 95–224) that a cooperative agreement (instead of a grant or contract) will be the most appropriate award instrument. Under HEW policy, no fee may be paid in connection with a cooperative agreement.

The Institute plans to announce the scope of work, the criteria for the award, and the closing date for proposals, during April. The announcement will be published in the *Commerce Business Daily.*

In a effort to foster the maximum competition for this award, this notice is published to provide interested persons and organizations with an opportunity to have their names placed on the mailing list to receive a copy of the announcment and the award requirements as soon as they are published.

Please send your written request to: Ms. Adelaide Thompson, Contracts and Grants Management Division, Stop 3, National Institute of Education, Washington, D.C. 20208, or telephone, (202) 254–5058.

To expedite the handling of your request, please provide a self-addressed mailing lable.

Dated: April 16, 1979.

Ricardo Martinez,

Acting Assistant Director, Reading and Language Studies Program on Teaching and Learning.

[FR Doc. 79-12493 Filed 4-20-79; 8:45 am]

BILLING CODE 4110-39-M

Office of Human Development Services

Basic Educational Skills Project (External Models); Grants

AGENCY: Office of Human Development Services, DHEW.

SUBJECT: Announcement of Availability of Grant Funds for Basic Educational Skills Projects (BES) (External Models).

SUMMARY: The Administration for Children, Youth and Families (ACYF) announces that applications are being accepted for grants under Title V, Head Start and Follow-Through, Section 522(a) of the "Headstart Economic Opportunity and Community Partnership Act of 1974" as amended for the Basic Educational Skills Project (External Models). Regulations governing the Project are published in the 45 CFR Part 1302.

DATES: Closing date for receipt of applications is June 22, 1979.

Program Purpose

The purpose of the Basic Educational Skills Project (BES) is to test or assist in the development of effective educational strategies or methods which will aid in overcoming special problems existing in the delivery of comprehensive educational services to disadvantaged children and their families.

Program Goal and Objectives

The goal of the BES Project is to develop educational programs that help children acquire appropriate basic educational skills in Head Start and elementary school. These programs must include four basic elements: curriculum, parent involvement, teacher attitudes and behaviors, and continuity.

External BES programs will be required to:

a. In coordination with a BES Facilitator, develop and implement a curriculum that is developmentally appropriate and related to the acquisition of basic educational skills;

b. Provide training to teachers and parents which will make them partners in the education of their children;

c. Coordinate the curriculum and the training with the home and not more than two public elementary schools so that children's learning experiences will be consistent and continuous over time;

d. Participate in BES research and evaluation efforts.

Eligible Applicants

Only current Head Start grantees presently receiving program operating funds from ACYF will be considered eligible for this grant program. In addition, each applicant must:

a. Have fiscal and program responsibility for a center-based Head Start program which operates at least eight months each school year;

b. Agree to serve as a demonstration model for groups interested in visiting or reviewing materials regarding the program;

c. Be in compliance or have an acceptable plan for being in compliance with Head Start Program Performance Standards;

d. Have enrolled in September 1979, at least 60 Head Start children four years of age who will enter kindergarten in the fall of 1980;

e. Expect these 60 children, in 1980, to feed into *no more than two* eligible elementary schools. Eligible elementary schools are defined as those which are located in Title I school attendance areas as referred to in the Elementary and Secondary Education Act, which are not participating in Project Follow-Through and which are within the same school district;

f. Be participating in no other Head Start research, demonstration or evaluation efforts;

g. Secure, in writing, an agreement with the Superintendent of Schools or the assigned designee to participate in this longitudinal effort in collaboration with Head Start.

Available Funds

The Administration for Children, Youth and Families will spend at least $6.843 million for the BES project during FY 1979. Of this money at least $2.55 million will be available for funding applications under this announcement.

It is anticipated that 18 grant awards will be made and each award will range between $125,000 and $165,000 based principally on the number of children enrolled in no more than two participating elementary schools.

These awards will be made for twelve months each.

Grantee Share of the Project

No non-Federal share in the form of local in-kind or cash contribution is required.

The Application Process

Availability of Forms

Application for grant under the Extenal BES Project must be submitted on standard forms provided for this purpose. Application kits which include the forms and other information may be obtained by writing to the appropriate ACYF Regional Office. (See list in Appendix A to this Program Announcement.)

Application Submission

One signed original and two copies must be submitted to the appropriate ACYF Regional Office address as specified in the application kit.

A-95 Notification Process

Grant Program is exempt from A-95 notification.

Application Consideration

The Commissioner for Children, Youth and Families determines the final action to be taken with respect to each grant application for this Project. Applications which are complete and conform to the requirements of this program announcement are subjected to a competitive review and evaluation by qualified persons independent of the Administration for Children, Youth and Families.

The review and evaluation will take place at a the Regional Office level and the results of the review, special considerations for funding, and comments from appropriate Headquarters ACYF staff will assist the Commissioner for ACYF in considering applications. Comments may also be solicited from consultants and specialists inside and outside the Federal government.

After the Commissione has reached a decision, unsuccessful applicants are notified in writing. Successful applicants are notified through the issuance of a Notice of Grant Awarded which sets forth the amount of funds granted, the terms and conditions of the grant, the budget period for which the support is given and the total period for which project support is contemplated.

Special Considerations for Funding

The Commissioner for ACYF has the right to make decisions on grant award which includes consideration of:

1: Geographic distribution of grants.

2. Racial and ethnic makeup of Head Start children to make sure that programs receiving grants are generally representative of all children served by Head Start.

3. Type of grantee (community action agency, school system, local government agency, etc.) to insure that programs receiving grants are generally representative of all grantees.

Criteria for Review and Evaluation of Applications

Competing grant applications will be reviewed and evaluated against the following criteria:

a. Description of the applicants goals and objectives and their applicability to the goals and objectives of the BES effort as outlined in the BES guidelines; (10 points)

b. Methodology and thoroughness with which the applicant responds to all aspects of the BES program as outlined in the BES guidelines and workbook; (35 points)

c. Appropriateness of background and experience of proposed BES staff members; (15 points)

d. Qualifications of Head Start teaching staff (CDA credential, B.A. in early childhood education and relevant field experience or participation in CDA training is preferred) and elementary school teaching staff (appropriate state certification is required); (5 points)

e. Discussion of the public schools (including class size, staff/child ratio, organizations, etc.) and the role they will play in implementing the four program elements: curriculum, parent involvement, teacher attitudes and behaviors, and continuity; (15 points)

f. Applicants plan for managing this effort and the adequacy of facilities and resources; (5 points)

g. Evidence that the submitted budget is reasonable in light of proposed staffing and numbers of children in the BES Head Start program and the feeder elementary schools; (10 points)

h. Discussion of effects or implications the following items might have on program implementation. (5 points)

- State or local curriculum requirements
- Teachers union regulations
- School desegregation policies

Closing Dates for Receipt of Applications

The closing date for receipt of applications under this Program Announcement is June 22, 1979. Applications may be mailed or hand delivered.

If mailed, applications received after the closing date will be accepted only if sent by registered mail and have the post mark of the closing date or earlier. Hand delivered applications must be

received by the close of business in the appropriate Regional Office June 22, 1979.

All other applications will be considered non-conforming and will not be reviewed.

(Catalog of Federal Domestic Assistance Program Number: 13,600 Child Development—Head Start)

Dated: April 17, 1979.

Blanding C. Ramirez,

Commissioner, Administration for Children, Youth and Families.

Approved: April 17, 1979.

Arabella Martinez,

Assistant Secretary for Human Development Services.

For information concerning the BES Project, contact the following ACYF National Office staff.

Administration for Children, Youth and Families, P.O. Box 1182, Washington, D.C. 20013;

Dr. Jenni W. Klein, Director of Educational Services (202)755-7794;

Dr. Joyce B. Riley (202)755-7581;

Sylvia M. Pechman (202)755-7768; or

ACYF Regional Office, BES Liaison Staff.

Region I.—Renee Davis, ACYF, JFK Federal Building, Government Center, Boston, Mass. 02203. (617)223-6450.

Region II.—Miriam Issacs, ACYF, Federal Building, 26 Federal Plaza, New York, N.Y. 10007. (212)264-4120.

Region III.—Paul Vicinanza, ACYF, Box 13716, 3535 Market Street, Philadelphia, Pa. 19101. (215)596-6757.

Region IV.—Pat Doyle, ACYF, 101 Marietta Tower, Atlanta, Ga. 30323. (404)221-2134.

Region V.—Eva Bose, ACYF, 300 South Wacker Drive, Chicago, Ill. 60606. (312)353-1787

Region VI.—Margaret Emswiler, ACYF, 1200 Main Tower Building, Dallas, Tex. 75205. (214)767-2976.

Region VII.—Tom Reck, ACYF, Federal Building, 601 East 12th Street, Kansas City, Mo. 64106. (816)374-5805.

Region VIII.—Jo Graham, ACYF, 1961 Stout Street, Denver, Colo. 80202. (303)837-3106.

Region IX.—Mary Lewis, ACYF, Federal Office Building, 50 United Nations Plaza, San Francisco, Calif. 94102. (415)556-0923.

Region X.—Frank Jones, ACYF, Mail Stop 622, Arcade Plaza Building, 1321 Second Avenue, Seattle, Wash. 98101. (206)442-0838.

Indian and Migrant Program Division.—Karen Henderon, ACYF, P.O. Box 1182, Washington, D.C. 20013. (202)755-9054.

[Program Announcement No. 13600-791]

[FR Doc. 79-12542 Filed 4-20-79; 8:45 am]

BILLING CODE 4110-92-M

Dissertation Programs; Grants

AGENCY: Office of Human Development Services, DHEW.

SUBJECT: Announcement of Availability of Funds for Dissertation Grants under the Aging Training Program.

SUMMARY: The Administration on Aging (AoA) announces that applications are being accepted for grants under Title IV, Part A, of the Older Americans Act for preparation of doctoral dissertations in the field of aging.

DATES: Closing date for receipt of applications is: June 22, 1979.

Program Purpose

The purpose of the Dissertation Program is to attract professionals in training into research and other careers which serve or benefit older Americans.

Program Goal and Objectives

Grants under this program are awarded to post-secondary educational institutions to provide support for doctoral dissertation projects in social gerontology and aging-related areas. The program's primary objective is to enable doctoral students to conduct dissertation projects on topics relevant to the development of programs and policies which would improve the circumstances of older Americans.

As a second objective, the Administration on Aging views the Dissertation Program as an opportunity for attracting minority professionals to the field of aging. Universities are strongly encouraged to submit doctoral dissertation proposals on behalf of minority students who are eligible to compete for awards under this program—Hispanic, Black, Asian, and American Indian. The Administration on Aging hopes to meet its goal of at least one-third minority participation in Fiscal Year 1979 and, to the extent possible, to include doctoral candidates from each of these four minority groups.

Eligible Applicants

Applications for Dissertation Program grants may be submitted on behalf of doctoral students only by institutions of higher education which grant doctoral degrees. Doctoral candidates who have or by September 1, 1979, will have passed all doctoral degree qualifications except the dissertation are eligible to participate in the Dissertation Program. The dissertation proposal must be approved by the appropriate faculty advisor and committee before submission to AoA. Separate proposals must be submitted for each dissertation project.

Available Funds

During Fiscal Year 1979, the Administration on Aging expects to award approximately thirty (30) Dissertation Program grants of $5,500 each, totaling $165,000. Awards will be made for a miximum of one (1) year. Projects will not be funded beyond the initial twelve (12) month budget period provided for at the time of award.

In Fiscal Year 1978, 70 applications for Dissertation Program grants were accepted for review and evaluation. Of these, 30 were funded, totaling $165,000.

Grantee Share of the Project

There is no cost sharing requirement under this program.

Indirect Cost Limitation

No indirect costs of allowances for administrative costs to the university are provided under this program.

The Application Process

Availability of Forms

Applications for grants under the Dissertation Program must be submitted on standard forms provided for this purpose. Application guidelines, instructions, and standard forms are contained in application kits which may be obtained by writing to:

Dissertation Program, Division of Research and Evaluation, Administration on Aging, Room 4644, DHEW North Building, 330 Independence Avenue, SW., Washington, D.C. 20201.

Application Submission

One (1) signed original and four (4) copies of the grant application, including all attachments, must be submitted to the address indicated in the application kit.

A-95 Notification Process

Not applicable.

Application Consideration

The Commissioner on Aging will make the final decision with respect to each grant application under this announcement. Applications which are complete and conform to the requirements of the program guidelines will be submitted to a review panel. This panel consists of persons outside the Administration on Aging who are considered to be experts in the field of aging.

The results of outside review of applications assist the Commissioner and his staff in evaluating competing applications. Unsuccessful applicants will be notified in writing. Successful applicants will be notified through the issuance of a Notice of Grant Awarded from the Office of Human Development Services. This notice sets forth the amount of funds granted, the terms and conditions of the grant, and the budget period for which support is given.

Special Considerations for Funding

In order to be considered for priority funding, the proposed dissertation project must fall within one or more of

the following three research strategy areas:

The Older Person, Family and Society.— Research in this area includes studies related to characteristics, needs and resources of older persons; and characteristics of family, neighborhood and community support systems as they affect the older person. Studies of social, economic and political conditions and of societal values as they affect older persons are also included in this broad area.

Public and Private Policies.— Research in this area covers issues related to public and private policies which impact on the elderly in such areas as employment, retirement, income, housing, helath care, and community services.

Community Operated Service Systems.— Research in this area includes issues related to the development and implementation of comprehensive and coordinated community-based service systems for older persons with particular attention to the most vulnerable, i.e., those who are very old, chronically ill, functionally impaired, and whose problems are exacerbated by social isolation or low income, or minority group status.

Applicants are encouraged to submit proposals which focus on the minority elderly within the three strategy areas. Research related to medicine, biological and physiological processes is not acceptable.

Criteria for Review and Evaluation of Applications

Competing grant applications will be reviewed and evaluated using the following criteria:

1. That the proposed project will make a significant contribution to knowledge relevant to programs and policies for the aging in one or more of the priority areas identified in this announcement under "Special Considerations for Funding" (35 points);

2. That the proposed project clearly defines the problems to be studied and adequately reviews the relevant literature on the subject (10 points);

3. That the methodology is sound and appropriate for use in the proposed project (formulation of specific hypotheses, operational definition of variables, data collection and analysis) (35 points);

4. That the proposed project is feasible and can be successfully completed on the basis of the plan of work submitted (15 points);

5. That the doctoral candidate is well qualified by reason of academic training and experience, including relevant academic and work experience, to undertake the activities proposed in the application (5 points).

To be considered for funding, an application must receive minimum score of 60 points.

Closing Date for Receipt of Applications

The closing date for receipt of applications under this program announcement is June 22, 1979. Applications may be mailed or hand delivered to the address indicated in the Dissertation Program Application Kit. Mailed applications received after the closing date will be accepted only if sent by registered mail and have the postmark of the closing date or earlier. Hand delivered applications will be accepted during regular working hours of 9 a.m. to 5 p.m.

(Catalogue of Federal Domestic Assistance Program Number: 13637, Programs for the Aging—Training Grants).

Dated: April 11, 1979.

Robert Benedict,
Commissioner on Aging.

Approved: April 17, 1979.

Arabella Martinez,
Assistant Secretary for Human Development Services.

[Program Announcement No. 13637-795]
[FR Doc. 79-12543 Filed 4-20-79; 8:45 am]
BILLING CODE 4110-92-M

Office of the Secretary

Advisory Council on Education Statistics Meeting

Notice is hereby given, pursuant to Section 10, Pub. L. 92-463, that a meeting of the Advisory Council on Education Statistics will be held on May 9, 1979, from 9:00 to 5:00 p.m., in Room 3000, FOB No. 6, 400 Maryland Avenue, SW., Washington, D.C. 20202. The meeting will be continued on May 10, 1979, from 9:00 a.m. to 12:30 p.m., at the same location.

The Advisory Council on Education Statistics is mandated by Section 406(c) of the General Education Provisions Act as added by Section 501(a) of the Education Amendments of 1974, Pub. L. 93-380 (20 U.S.C. 1221e-1(c)), to advise the Secretary of the Department of Health, Education, and Welfare, and the Assistant Secretary for Education, and the National Center for Education Statistics (NCES); and "shall review general policies for the operation of the Center and shall be responsible for establishing standards to ensure that statistics and analyses disseminated by the Center are of high quality and are not subject to political influence."

The meeting agenda will include an Administrator's Report summarizing recent developments regarding budget, staff, and major projects of the National Center for Education Statistics.

Other major topics will include a preliminary review of the Center's Fiscal 1980 program; discussions of data burden and utility; and the annual election of the Council's Vice-Chair.

The meeting is open to the public; however, because of limited accommodations, those members of the public wishing to attend should make reservations by writing, no later than April 30, 1979 to:

Executive Director, Advisory Council on Education Statistics, Room 3153-E, FOB No. 6, 400 Maryland Avenue SW., Washington, D.C. 20202.

Records shall be kept of all Council proceedings and shall be available for public inspection in the Office of the Administrator, National Center for Education Statistics, located at 400 Maryland Avenue, SW., Washington, D.C. 20202.

Signed at Washington, D.C., on April 17, 1979.

Marie D. Eldridge,
Administrator, National Center for Education Statistics.
[FR Doc. 79-12391 Filed 4-20-79; 8:45 am]
BILLING CODE 4110-89-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

Field Testing of a Combined Application/Verification Process in Major Disasters

AGENCY: Federal Disaster Assistance Administration, Department of Housing and Urban Development.

ACTION: Notice.

SUMMARY: This Notice is to inform the public of this Agency's intention to field test a new application/verification process for individuals applying for disaster assistance in Presidentially declared major disasters.

DATED: March 9, 1979.

FOR FURTHER INFORMATION CONTACT: Charles D. Robinson, Office of Individual Assistance, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410 (202-634-7860).

NOTICE: Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 (39 FR 25939, July 11, 1974), and delegated to me by the Secretary, under Department of Housing and Urban Development Delegation of Authority (39 FR 28227, August 5, 1974), and by virtue of the Disaster Relief Act of 1974 (Pub. L. 93-288, as amended, 42 U.S.C. 5121 *et seq.*) notice is hereby given that this Agency will conduct at least three field tests of proposed new

Combined Application/Verification Process. Under this process, disaster victims of a Presidentially declared major disaster who are in need of disaster assistance in the form of Small Business Administration disaster loans, temporary housing, and/or a State/Federal individual and family grant will fill out one combined application form. This one combined application form serves as the application to one or more of these three assistance programs and as a referral to other agencies with assistance programs. A system of records complying with the "Privacy Act" was published in the Federal Register on January 11, 1979.

These tests will be conducted in selected major disasters following publication of this Notice and in cooperation with the Small Business Administration and the State in which the major disaster has been declared. For test purposes only, the following Individual and Family Grant Program regulations, 24 CFR 2205.48, are modified: 24 CFR 2205.48(c)(1)(i)(A); (c)(1)(i)(B); (c)(1)(iv); (e)(1)(iii); (e)(1)(iv)(A); (e)(1)(iv)(B); (g)(1)(ii); (g)(1)(iii); and (g)(1)(iv).

The following subsections of § 2205.48 are modified for the field tests of the Combined Application/Verification Process as shown:

(c)(1)(i)(A) Not Applicable.

(c)(1)(i)(B) Not Applicable.

(c)(1)(iv) Where an individual or family is otherwise eligible for a grant to repair, replace, or rebuild a home or to purchase insurable furnishings to be contained in the home, the Federal Coordinating Officer (FCO) shall determine whether the home is located in a Federal Insurance Administration (FIA)-identified special flood hazard area as shown on its flood hazard boundary or flood insurance rate map in effect longer than one year (see 42 U.S.C. 4001 et seq.), and whether the community in which the home is located is participating or not participating in the National Flood Insurance Program (NFIP). Based on these two determinations, the State shall determine whether assistance is prohibited according to the Flood Disaster Protection Act as amended, and if not prohibited, whether the individual or family representative must purchase flood insurance as a condition of receiving grant assistance in order to reduce future avoidable claims for Federal or State disaster assistance. These determinations by States are required in order for FDAA to comply with its obligations under Sections 102(a) and 202(a) of the Flood Disaster Protection Act, as amended. The policy must * * *

(e)(1)(iii) Not Applicable.

(e)(1)(iv)(A) Not Applicable.

(e)(1)(iv)(B) Determining applicant eligibility and grant amounts by a State employee or panel of State employees.

(g)(1)(ii) The Federal Coordinating Officer will accept applications * * *

(g)(1)(iii) Any application filed after the 60-day period stated above must be reviewed by the FCO to determine whether the late filing was the result of extenuating circumstances or conditions beyond the control of the individual or family. If such conditions or circumstances are demonstrated, the FCO will determine that good cause existed for late filing and accept that application as though it had been filed on a timely basis. The State will process the accepted late application. Otherwise, the application will be rejected.

(g)(1)(iv) No application will be accepted by the FCO or processed by the State if it is filed more than 90 days following the date on which the major disaster was declared.

Issued at Washington, D.C., April 13, 1979.

William H. Wilcox,
Administrator.

[Docket No. N-79-824]

[FR Doc. 79-12495 Filed 4-20-79 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Alaska Native Claims Settlement

Correction

In FR Doc. 79-9992 appearing at page 19257 in the issue of Monday, April 2, 1979, make the following changes:

(1) On page 19258, third column, first line of the paragraph lettered k, delete "an existing" and insert "a proposed" in its place; and in the second line of the paragraph lettered m, "from" should read "for".

(2) On page 19259, first column, seventh line from the top, "benfits" should read "benefits"; in the sixth line of the paragraph that begins with "Pursuant", "Ldt." should read "Ltd."; and in the ninth line fom the bottom, "Steeet" should read "Street".

[F-14942]

BILLING CODE 1505-01-M

Carbon Basin Area Wyoming Coal Draft Environmental Period; Extension of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of extension of comment period on Draft Environmental Statement, Carbon Basin Area Wyoming Coal.

SUMMARY: Under procedures published by the Council on Environmental Quality on November 29, 1978, the Department of the Interior will consider requests for an extension of the comment period on the Draft Environmental Statement for proposed coal leasing in Carbon Basin Area Wyoming. Comments were requested through April 16, 1978, but are hereby extended for an additional period to April 23, 1979. Comments received by that date will be considered before final action to be taken on the preparation of the final environmental statement. The Draft environmental Statement is availabe for public review in Bureau of Land Management Offices in Cheyenne, Rawlins, and in public libraries in Carbon, Laramie, Natrona, Converse, Albany, and Platte Counties, Wyoming.

DATE: Comments by April 23, 1979.

ADDRESS: Send comments to: Team Leader, Coal ES Team, Bureau of Land Management, P.O. Box 670, Rawlins, Wyoming 82301.

FOR FURTHER INFORMATION CONTACT:
Ed Coy, 307-324-7171 ext. 3300.

April 16, 1979.

Roman H. Koenings,
Acting Associate Director, Bureau of Land Management.

[INT DES 79-9]

[FR Doc. 79-12489 Filed 4-20-79; 8:45 am]

BILLING CODE 4310-84-M

Designated Wilderness Study Areas of the Public Lands in the California Desert Conservation Area; Extension of Effective Date

Correction

In FR Doc. 79-11765 appearing at page 22521 in the issue for Monday, April 16, 1979, first column, last line of the first paragraph, delete "May 16, 1979" and insert the following after "effective": "30 days following publication of the notice in the Federal Register."

BILLING CODE 1505-01-M

DEPARTMENT OF JUSTICE

Proposed Consent Decree in Action to Enjoin Discharge of Water Pollutants

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on April 6, 1979, a proposed consent decree in *United States* v. *Olin Corporation,* was lodged with the United States District Court for the Western District of Louisiana. The proposed decree would require defendants to achieve compliance with the discharge limitations contained in the decree on or before December 31, 1981. Subject to the provisions of the decree, defendant is enjoined from operating its Lake Charles plant in a manner which exceeds the applicable limitations.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice written comments relating to the proposed judgement. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States* v. *Olin Corporation,* D. J. Ref. No. 90–5–1–1–1139.

The proposed consent decree may be examined at the office of the United States Attorney, Post Office Box 33, Shreveport, Louisiana 71161, at the Region VI, First International Building, 1201 Elm Street, Dallas, Texas 75270, and the Pollution Control Section, Land and Natural Resources Division, Department of Justice (Room 2625), Ninth Street and Pennsylavania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Pollution Control Section, Land and Natural Resources Division, Department of Justice.

James W. Moorman,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 79-12490 Filed 4-20-79; 8:45 am]

BILLING CODE: 4410-01-M

LEGAL SERVICES CORPORATION

Grants and Contracts

April 20, 1979.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93–355, 88 Stat. 378, 42 U.S.C. 2996–2996*l*, as amended, Pub. L. 95–222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly . . . such grant, contract or project."

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by:

1. Fredericksburg Area Legal Aid Society in Fredericksburg, Virginia to serve Lancaster, Northumberland, Richmond and Westmoreland Counties.

2. Petersburg Legal Aid Society in Petersburg, Virginia to serve Surry County.

3. Tidewater Legal Aid Society in Norfolk, Virginia to serve Virginia Beach City.

Interested persons are hereby invited to submit written comments or recommendations concerning the above applications to the Regional Office of the Legal Services Corporation at:

Legal Services Corporation, Northern Virginia Regional Office, 1730 North Lynn Street, Suite 600, Arlington, Virginia 22209.

Alice Daniel,

Acting President.

[FR Doc. 79-12418 Filed 4-20-79; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL NEIGHBORHOOD REINVESTMENT CORPORATION

Meeting of the Board of Directors

Pursuant to the Provisions of the Neighborhood Reinvestment Corporation Act (Title VI of the Housing and Community Development Amendments of 1978, Pub. L. 95–577), notice is hereby given of a meeting of the National Neighborhood Reinvestment Corporation.

Time and Date: 2:00 p.m.; April 25, 1979.
Place: Board Room, Sixth Floor, 1700 G Street, N.W., Washington, D.C.
Status: Open Meeting, Board of Directors.
Contact Person for More Information: Myra Peabody, 202–377–6392.
Agenda: Call to Order and Remarks of the Chairman. Approval of Minutes—January 24, 1979 Meeting. Approval of Minutes—March 15, 1979 Meeting. Audit Committee Report. Amendment to Banking Resolutions. Treasurer's Report. Executive Director's Report. Freedom of Information Procedures. Sunshine Act Procedures. Other Business.

No. 4, April 18, 1979.

Donnie L. Bryant,

Secretary.

[FR Doc. 79-12459 Filed 4-20-79; 8:45 am]

BILLING CODE: 98880-8-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Reactor Fuel; Meeting

The ACRS Subcommittee on Reactor Fuel will hold an open meeting on May 8, 1979, in Room 1046, 1717 H Street, N.W., Washington, D.C. 20555 to discuss various items concerning NRC actions on fuel-related issues. Notice of this meeting was published March 23, 1979 [44 FR 17837].

In accordance with the procedures outlined in the Federal Register on October 4, 1978, (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows: *Tuesday, May 8, 1979, 8:30 a.m. until the conclusion of business.*

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hold discussions with representatives of the NRC Staff, and their consultants, pertinent to this review. The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the subject is ready for review by the full Committee.

Further information regarding topcis to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Dr. Thomas G. McCreless (telephone 202/634–3267), between 8:15 a.m. and 5:00 p.m., EST.

April 17, 1979.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 79-12297 Filed 4-20-79; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Ad Hoc Subcommittee on the Three Mile Island Nuclear Station, Unit 2 Accident; Meeting

The April 23-24, 1979 meeting of the Advisory Committee on Reactor Safeguards Ad Hoc Subcommittee on Implications of the Three Mile Island, Unit 2 accident has been rescheduled to April 30—May 1, 1979 (and May 9 if needed) in Room 1046, 1717 H St. N.W., Washington, D.C. The Subcommittee will meet with representatives of nuclear industry, state and local officials, the NRC Staff, utility industry, and other interested persons to discuss the implications of the Three Mile Island, Unit 2 accident.

Notice of this meeting was published April 12 and 18, 1979.

All Items remain the same as previously announced. For further information contact the Designated Federal Employee for this meeting, Mr. Ragnwald Muller, by a prepaid telephone call (202) 634-1413 between 8:15 a.m. and 5:00 p.m., EST.

Dated: April 19, 1979.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 79-12633 Filed 4-20-79; 8:45 am]

BILLING CODE 7590-01-M

Commonwealth Edison Co., Interstate Power Co. and Iowa-Illinois Gas and Electric Co; Docketing of Application for Construction Permits (Part I) and Early Site Review

Pursuant to 10 CFR 2.10(a-1), notice is hereby given that the Commonwealth Edison Company, *et al.* has submitted part one of an application for construction permits for the Carroll County Station, Unit Nos. 1 and 2. This submittal includes a request that the NRC conduct an early review, hearing, and issue a partial initial decision on issues of site suitability. The review for the Carroll County Station will be conducted within the purview of applicable provisions of 10 CFR Parts 50, 51, and 100. The five volume Site Suitability Environmental Report and three volume Site Suitability Site Safety Report were docketed on April 10, 1979. Docket Nos. S50-599 and S50-600 have been assigned to the Carroll County review and should be referenced in any correspondence relating thereto.

The proposed site is located in northwestern Illinois, about 5 miles southeast of the city of Savanna and 3 miles east of the Mississippi River in Carroll County. The Carroll site will incorporate a water intake structure in the Base Floodplain of the Mississippi River. Information regarding floodplains will be evaluated when we issue our environmental impact statement.

A copy of the application, Site Suitability Environmental Report and Site Suitability Site Safety Report are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C., and at the Savanna Township Library, 326 Third Street, Savanna, Illinois. Copies of the information are also being made available at the State Clearinghouse, Bureau of the Budget, Lincoln Tower Plaza, 524 S. Second Street, Room 315, Springfield, Illinois 62706.

A Notice of Hearing is being published separately, setting forth the radiological safety and environmental issues to be considered during the review. A date for submitting Petitions for Leave to Intervene will be set forth in the Notice of Hearing.

Interested persons may submit comments on the applicant's Site Suitability Environmental Report for the Commission's consideration. Federal and State agencies are being provided with copies of the applicant's site Suitability Environmental Report (local agencies may obtain this document upon request). In accordance with 10 CFR 2.605, the Commission, upon its own initiative or upon the timely motion of any party to the proceeding, may decline to initiate an early hearing or render an early partial decision on any issue or issues of site suitability for which early consideration is sought that would prejudice the later review and decision on alternative sites or that would not be in the public interest. Comments on whether an early site review should be conducted under 10 CFR 21.605 are due by June 4, 1979. Comments on the merits of the proposed Carroll County site are due by September 7, 1979. Comments by Federal, State and local officials or other persons received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, D.C., and the Savanna Township Library, 326 Third Street, Savanna, Illinois.

After the site information has been analyzed by the Office of Nuclear Reactor Regulation staff, and absent a determination by the Commission to decline to initiate an early site review, a Draft Site Environmental Statement and Site Safety Evaluation Report will be prepared. Upon preparation of the Draft Site Environmental Statement, the Commission will, among other things, cause to be published in the Federal Register a summary notice of availability of the Draft Statement, with a request for comments from interested persons on the draft statement. The summary notice will also contain a statement to the effect that comments of Federal agencies and State and local officials will be made available when received. Upon consideration of comments submitted with respect to the Draft Site Environmental Statement, the staff will prepare a Final Site Environmental Statement, the availability of which will be published in the Federal Register.

Upon preparation of the Site Safety Evaluation Report, the Commission will notice its availability in the Federal Register.

Any person who wishes to have his views on antitrust matters of the application presented to the Attorney General for consideration should submit such views in accordance with a subsequent notice that will be published in the Federal Register.

Dated at Bethesda, Maryland, this 17th day of April 1979.

For the Nuclear Regulatory Commission.

Ronald L. Ballard,

Chief, Environmental Projects Branch 1, Division of Site Safety and Environmental Analysis.

[Docket Nos. S50-599, S50-600]

[FR Doc 79-12467 Filed 4-20-79; 8:45 am]

BILLING CODE 7590-01-M

Revision to the Standard Review Plan (NUREG-75/087); Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced (Federal Register notice dated December 8, 1977), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to Section Nos. 13.1.1, "Management and Technical Support Organization," 13.1.2, "Operating Organization," and 13.1.3, "Qualifications of Nuclear Plant Personnel" of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear

power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NUREG–75/087, are available from the National Technical Information Service, Springfield, Virginia 22161. The domestic price is $70.00, including first-year supplements. Annual subscriptions for supplements alone are $30.00. Individual sections are available at current prices. The domestic price for Revision No. 1 to Section Nos. 13.1.1, 13.1.2, or 13.1.3 is $4.00. Foreign price information is available from NTIS. A copy of the Standard Review Plan, including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555 (5 U.S.C. 552(a)).

Dated at Bethesda, Md., this 10th day of April 1979.

For the U.S. Nuclear Regulatory Commission.

Roger S. Boyd,

Director, Division of Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 79-12472 Filed 4-20-79; 8:45 am]

BILLING CODE 7590-01-M

Study of Nuclear Power Plant Construction During Adjudication; Meetings

The Nuclear Regulatory Commission's advisory committee on nuclear power plant construction during adjudication has been forced to reschedule its sixth and seventh meetings. The group's sixth meeting will be held on Wednesday, April 25, 1979, at NRC Headquarters, 1717 H Street, NW., Washington, DC, 20555, immediately after the conclusion of the group's briefing of the Commission on its interim report. At the meeting the group will discuss the guidance it expects to have received from the Commission during that prior briefing. The group's seventh meeting will be held Friday, May 11, 1979, at 9:30 a.m. in Room 415, East West Towers, 4350 East West Highway in Bethesda, Maryland.

Members of the public are invited to attend the group's meetings and there will be a limited amount of time available during each meeting for members of the public to make oral statements to the study group. Written comments, addressed to the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, will be accepted for one week after each meeting. The Chairman of the study group is empowered to conduct the meetings in a manner that, in his judgment, will facilitate the group's work, including, if necessary, continuing or rescheduling meetings to another day.

A file of documents relevant to the group's work including a complete transcript of each meeting, memoranda exchanged between group members, public comments and other documents, is available for inspection and copying at the Commission's Public Document Room at 1717 H Street, NW., Washington, DC 20555. The Secretary of the NRC maintains a mailing list for persons interested in receiving notices of the group's meetings and actions. Anyone wishing to be on that list should write to: Secretary of the Commission, Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

The study group will provide its final report to the Commission by November 1, 1979. For further information on the study group's mission, please call Stephen S. Ostrach, Office of the General Counsel, Nuclear Regulatory Commission, (202) 634–3224.

Dated at Washington, DC, this 17th day of April, 1979.

Gary Milhollin,

Chairman.

[FR Doc. 79-12471 Filed 4-20-79; 8:45 am]

BILLING CODE 7590-01-M

Alabama Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 11 to Facility Operating License No. NPF–2, issued to Alabama Power Company (the licensee), which revised Technical Specifications for operation of the Joseph M. Farley Nuclear Plant, Unit No. 1 (the facility) located in Houston County, Alabama. The amendment was effective as of its date of issuance.

The amendment adds a license condition relating to the completion of facility modifications and implementation of administrative controls for fire protection.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendments was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated September 15, 1977, as supplemented by letters dated February 23, July 14, October 27, December 13, 1978, and January 3, 1979, (2) Amendment No. 11 to License No. NPF–2, and (3) the Commission's related Safety Evalution. All of these items are available for public inspection at the Commission Public Document Room, 1717 H Street, NW., Washington, D.C. and at the George S. Houston Memorial Library, 212 W. Vurdeshaw Street, Dothan, Alabama 36301. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 13th day of April, 1979.

For the Nuclear Regulatory Commission.

A. Schwencer,

Chief, Operating Reactors Branch No. 1, Division of Operating Reactors.

[Docket No. 50-348]

[FR Doc. 79-12473 Filed 4-20-79; 8:45 am]

BILLING CODE 7590-01-M

Arizona Public Service Co., Et Al.; Availability of Draft Environmental Statement for Palo Verde Nuclear Generating Station, Units 4 and 5

Pursuant to the National Environmental Policy Act of 1969 and the United States Nuclear Regulatory Commission's regulations in 10 CFR Part 51, notice is hereby given that a Draft Environmental Statement (NUREG–0522) prepared by the Commission's Office of Nuclear Reactor Regulation related to the proposed construction of the Palo Verde Nuclear Generating Station, Units 4 and 5, to be located in Maricopa County, Arizona, is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. and in the Phoenix Public Library, Science and Industry Section, 12 East McDowall Road, Phoenix, Arizona. The Draft Statement is also being made available at the State Clearinghouse,

Office of Economic Planning and Development, 1700 West Washington Street, Phoenix, Arizona, and at the Maricopa Association of Governments, 1820 West Washington Street, Phoenix, Arizona. Requests for copies of the Draft Environmental Statement should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C., Attention: Director, Division of Site Safety and Environmental Analysis.

The Applicant's Environmental Report, as supplemented, submitted by Arizona Public Service Company on behalf of itself and ten joint applicants as also available for public inspection at the above-designated locations. Notice of availability of the Applicant's Environmental Report was published in the Federal Register on November 20, 1978 (43 FR 54148).

Pursuant to 10 CFR Part 51, interested persons may submit comments on the Applicant's Environmental Report, as supplemented, and the Draft Environmental Statement for the Commission's consideration. Federal and State agencies are being provided with copies of the Applicant's Environmental Report and the Draft Environmental Statement (local agencies may obtain these documents upon request). Comments are due by June 4, 1979. Comments by Federal, State, and local officials, or other persons received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, D.C. and the Phoenix Public Library, Science and Industry Section, 12 East McDowall Road, Phoenix, Arizona. Upon consideration of comments submitted with respect to the Draft Environmental Statement, the Commission's staff will prepare a Final Environmental Statement, the availability of which will be published in the Federal Register.

Comments on the Draft Environmental Statement from interested persons of the public should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Site Safety and Environmental Analysis.

Dated at Bethesda, Maryland, this 19th day of April 1979.

For the Nuclear Regulatory Commission

Wm. H. Regan, Jr.,

Chief, Environmental Projects Branch 2, Divisions of Site Safety and Environmental Analysis.

[Docket Nos. STN 50-592 and STN 50-593]

[FR Doc. 79-12474 Filed 4-20-79; 8:45 am]

BILLING CODE: 7590-01-M

Arkansas Power & Light Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 41 to Facility Operating License No. DPR-51, issued to Arkansas Power & Light Company (AP&L or the licensee), which revised the Technical Specifications for operation of Arkansas Nuclear One, Unit No. 1 (ANO-1 or the facility) located in Pope County, Arkansas. The amendment is effective as of the date of issuance.

This amendment revises the Technical Specifications for Steam Generator Tube Surveillance.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the licensee's application for amendment dated January 19, 1979, as supplemented March 13, 1979, (2) Amendment No. 41 to License No. DPR-51, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Arkansas Polytechnic College, Russellville, Arkansas. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 11th day of April 1979.

For the Nuclear Regulatory Commission.

Robert W. Reid,

Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[Docket No. 50-313]

[FR Doc. 79-12475 Filed 4-20-79; 8:45 am]

BILLING CODE 7590-01-M

Consumers Power Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 27 to Facility Operating License No. DPR-6, issued to the Consumers Power Company (the licensee), which revised the license for operation of the Big Rock Point Plant (the facility), located in Charlevoix County, Michigan. The provisions of the amendment became effective on February 23, 1979.

The amendment adds a license condition to include the Commission-approved physical security plan as part of the license.

The licensee's filing complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate finding as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

The licensee's filing dated February 20, 1979, and supplements thereto dated March 2, 1979 and March 27, 1979, and the Commission's Security Plan Evaluation Report are being withheld from public disclosure pursuant to 10 CFR § 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR § 9.12.

For further details with respect to this action, see (1) Amendment No. 27 to License No. DPR-6 and (2) the Commission's related letter to the licensee dated April 10, 1979. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Charlevoix Public Library, 107 Clinton Street, Charlevoix, Michian 49720. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 10th day of April, 1979.

For the Nuclear Regulatory Commission.

Dennis L. Ziemann,

Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[Docket No. 50-155]

[FR Doc. 79-12476 Filed 4-20-79; 8:45 am]

BILLING CODE 7590-01-M

Consumers Power Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 47 to Facility Operating License No. DPR-20, issued to the Consumers Power Company (the licensee), which revised the license for operation of the Palisades Plant (the facility), located in Covert Township, Van Burean County, Michigan.The provisions of the amendment became effective on February 23, 1979.

The amendment adds a license condition to include the Commission-approved physical security plan as part of the license.

The licensee's filing complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

The licensee's filing dated February 20, 1979, and supplements thereto dated March 2, 1979 and March 27, 1979, and the Commission's Security Plan Evaluation Report are being withheld from public disclosure pursuant to 10 CFR § 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR § 9.12.

For further details with respect to this action, see (1) Amendment No. 47 to License No. DPR-20 and (2) the Commission's related letter to the licensee dated April 10, 1979. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. and at the Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49006. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 10th day of April, 1979.

For the Nuclear Regulatory Commission.

Dennis L. Ziemann,

Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[Docket No. 50-255]

[FR Doc. 79-12477 Filed 4-20-79; 8:45 am]

BILLING CODE 7590-01-M

Consumers Power Co.; Order Rescheduling Prehearing Conference

In the matter of Consumers Power Co. (Palisades Nuclear Plant).

The Applicants have requested that the prehearing conference scheduled for May 10, 1979 (44 FR 22230, April 13, 1979) be rescheduled for another date. We are advised that neither the petitioner for intervention nor the NRC Staff has any objection. Good cause having been demonstrated, the prehearing conference is rescheduled for Wednesday, May 9, 1979, beginning at 9:30 a.m., local time, in the Board of Commissioners Room (3rd Floor), Berrien County Courthouse, 801 Port Street, St. Joseph, Michigan 49085.

As previously stated, the Board will hear oral limited appearance statements at this conference, pursuant to 10 CFR § 2.715(a), to the extent that time is available beyond that necessary to complete the formal business of the conference.

The date by which the petitioner for intervention may amend or supplement its petition remains April 25, 1979. (The Applicants and Staff are invited to respond, with the responses to reach us no later than May 7, 1979, one day earlier than previously scheduled.)

It is so ordered.

Dated at Bethesda, Maryland, this 17th day of April 1979

The Atomic Safety and Licensing Board.

Charles Bechhoefer,

Chairman.

[Docket No. 50-255SP]

[FR Doc. 79-12478 Filed 4-20-79; 8:45 am]

BILLING CODE 7590-01-M

Georgia Power Co. (Alvin W. Vogtle Nuclear Plant, Unit Nos. 1 and 2); Director's Denial of 2.206 Request

In the matter of Georgia Power Company (Alvin W. Vogtle Nuclear Plant, Unit Nos. 1 and 2).

By letter dated October 31, 1978, Georgians Against Nuclear Power, of Atlanta, Georgia, requested that the Commission suspend the construction permits issued to Georgia Power Company for the Alvin W. Vogtle Nuclear Plant, Unit Nos. 1 and 2 and hold hearings to determine the need for the Vogtle units in light of allegedly new evidence concerning demand for electricity in Georgia and relative costs of energy alternatives. This request was noticed in the Federal Register on December 8, 1978. (43 FR 57695).

After consideration of the information submitted by the Georgians Against Nuclear Power, I have determined that this information does not represent a change in circumstances which would significantly alter the cost-benefit balance for the facility as originally determined in the construction pemit proceeding. Consequently, this request to suspend the license and institute a new proceeding is denied.

A copy of this determination will be placed in the Commission's Public Document Room at 1717 H Street, Washington, D.C. 20555 and the local Public Document Room for the Alvin W. Vogtle Plant, Unit No. 1 and 2, located at the Burke County Library, 4th Street, Waynesboro, Georgia 30830.

Dated at Bethesda, Maryland this 13th day of April 1979.

For the Nuclear Regulatory Commission.

Roger S. Boyd,

Acting Director, Office of Nuclear Reactor Regulation.

[Docket Nos. 50-424; 50-425 (2.206)]

[FR Doc. 79-12479 Filed 4-20-79; 8:45 am]

BILLING CODE 7590-01-M

Iowa Electric Light & Power Co. (Duane Arnold Energy Center); Request to Suspend Technical Amendment No. 9 to License No. DPR-49

Notice is hereby given that by petition dated March 20, 1979, the Citizens United for Responsible Energy (CURE) of Des Moines, Iowa, requested the Commission pursuant to 10 CFR 2.206 to institute a proceeding to suspend Technical Amendment No. 9 to License No. DPR-49 which authorizes Iowa Electric Light and Power Company to handle special nuclear material at the Duane Arnold Energy Center. CURE alleges that suspension of Technical Amendment No. 9 and the subsequent removal of special nuclear material which was authorized to be handled under the amendment will prevent unlawful diversion of the special nuclear material by the licensee's employees.

In accordance with the procedures specified in 10 CFR 2.206 of the Commission's regulations, action will be taken on this petition within a reasonable time. A copy of the petition is available for inspection in the

Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555, and at the local public document room for the Duane Arnold Energy Center, located at the Cedar Rapids Public Library, 426 Third Avenue, S.E., Cedar Rapids, Iowa 52401.

Dated at Bethesda, Maryland this 12th day of April 1979.

For the Nuclear Regulatory Commission.

Roger S. Boyd,
Acting Director, Office of Nuclear Reactor Regulation.

[Docket No. 50-331]
[FR Doc. 79-12480 Filed 4-20-79; 8:45 am]
BILLING CODE 7590-01-M

Pacific Gas & Electric Co. (Diablo Canyon Nuclear Power Plant, Units 1 and 2); Order Extending Construction Completion Dates

Pacific Gas and Electric Company is the holder of Construction Permit Nos. CPPR-39 and CPPR-69 issued by the Atomic Energy Commission[1] on April 23, 1968 and December 9, 1970, respectively, for construction of the Diablo Canyon Nuclear Power Plant, Units 1 and 2, presently under construction at the Company's site in San Luis Obispo County, California.

On March 21, 1979, Pacific Gas and Electric Company filed a request for extensions of the completion dates for Units 1 and 2.

On November 15, 1978, the Commission's staff published Supplement No. 8 to the Safety Evaluation Report for the Diablo Canyon Nuclear Power Plant documenting the need to make certain modifications. Consequently, additional time will be required to complete the modifications and to conclude the licensing process for Unit 1. Additional time is also required to complete the modifications on Unit 2 by personnel who are giving priority to completing Unit 1.

This action involves no significant hazards consideration; good cause has been shown for the delays; an environmental statement, negative declaration or environmental impact appraisal need not be prepared in connection with the extension; and the requested extension is for a reasonable period, the bases for which are set forth in a staff evaluation of request for extension.

For further details with respect to this action, see (1) the applicant's request for extension of the construction permit completion dates dated March 21, 1979, and (2) the staff's related evaluation, all of which are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. 20555 and at the Local Public Document Room located in San Luis Obispo County Free Library, P.O. Box X, San Luis Obispo, California 93406.

It is hereby ordered that the latest completion date for CPPR-39 is extended from April 30, 1979 to June 30, 1979 for Unit 1 and the latest completion date for CPPR-69 is extended from October 31, 1979 to February 29, 1980 for Unit 2.

Date of Issuance: April 13, 1979.

For the Nuclear Regulatory Commission.

Roger S. Boyd,
Director, Division of Project Management, Office of Nuclear Reactor Regulation.

[Docket Nos. 50-275 and 50-323]
[FR Doc. 79-12481 Filed 4-20-79; 8:45 am]
BILLING CODE 7590-01-M

[1] Effective January 20, 1975, the Atomic Energy Commission became the Nuclear Regulatory Commission and permits in effect on that day were continued under the authority of the Nuclear Regulatory Commission.

Pacific Gas & Electric Co. (Stanislaus Nuclear Project, Unit 1); Conference With Counsel

April 17, 1979.

In the Matter of Pacific Gas and Electric Co. (Stanislaus Nuclear Project, Unit 1).

Please take notice that a conference with counsel will be held at the Nuclear Regulatory Commission's Hearing Room on May 15-17, 1979, commencing at 9 a.m., local time, the location is 4350 East West Highway, 5th Floor, Bethesda, Maryland 20014.

This conference will consider the briefs and responses filed by the parties at the request of the Board concerning the scope and adequacy of the Stanislaus antitrust commitments, previously negotiated between PG&E's and the Department of Justice. Counsel will also be heard on the objections to PG&E's fourth set of interrogatories and motions for protective order, filed by the other parties.

A detailed analysis will also be made of the nature and extent of discovery and document production to date, and of the continuing justification therefor. Any other pending motions (including deposition requests) will also be considered by the Board, as well as additional scheduling matters.

It is so ordered.

Dated at Bethesda, Maryland this 17th day of April 1979.

For the Atomic Safety and Licensing Board.

Marshall E. Miller,
Chairman.

[Docket No. P-564A]
[FR Doc. 79-12482 Filed 4-20-79; 8:45 am]
BILLING CODE 7590-01-M

Southern California Edison Co. and San Diego Gas & Electric Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 40 to Provisional Operating License No. DPR-13, issued to the Southern California Edison Company and San Diego Gas and Electric Company (the licensees), which revised the license for operation of the San Onofre Nuclear Generating Station, Unit 1, (the facility), located in San Diego County, California. The provisions of the amendment became effective on February 23, 1979.

The amendment adds a license condition to include the Commission-approved physical security plan as part of the license.

The Licensees' filing complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

The licensees' filing dated December 19, 1978, as revised February 23, 1979 and March 26, 1979, and the Commission's Security Plan Evaluation Report are being withheld from public disclosure pursuant to 10 CFR § 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR § 9.12.

For further details with respect to this action, see (1) Amendment No. 40 to License No. DPR-13 and (2) the Commission's related letter to the licensees dated April 10, 1979. These items are available for public inspection at the Commission's Public document Room, 1717 H Street, N.W., Washington, D.C. and at the Mission Viejo Branch Library, 24851 Chrisanta Drive, Mission Viejo, California 92676. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington,

D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 10th day of April 1979.

For the Nuclear Regulatory Commission.

Dennis L. Ziemann,

Chief, Operating Reactors Branch No. 2, Division of Operating Reactors.

[Docket No. 50-206]

[FR Doc. 79-12483 Filed 4-20-79; 8:45 am]

BILLING CODE 7590-01-M

Texas Utilities Generating Co. et al. (Comanche Peak Steam Electric Station Units 1 and 2); Corrected Order Relative To a Conference to Consider Petitions to Intervene

In the Matter of Texas Utilities Generating Company, *et al.* (Comanche Peak Steam Electric Station, Units 1 and 2).

The Board's Order of April 9, 1979, identified the location of the May 22, 1979, prehearing conference as "Glen Rose County Courthouse." The identification should have been "Somervell County Courthouse, On the Square at Bernard Street, Glen Rose, Texas."

It is so ordered.

Dated at Bethesda, Maryland this 17th day of April 1979

For the Atomic Safety and Licensing Board.

Elizabeth S. Bowers,

Chairman.

[Docket Nos. 50-445; 50-446]

[FR Doc. 79-12484 Filed 4-20-79; 8:45 am]

BILLING CODE 7590-01-M

Wisconsin Electric Power Co.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 37 and 42 to Facility Operating License Nos. DPR-24 and DPR-27, issued to Wisconsin Electric Power Company (the licensee), which revised the licenses for operation of the Point Beach Nuclear Plant, Unit Nos. 1 and 2, (the facility), located about 15 miles north of Manitowoc, Wisconsin. The amendments are effective as of their date of issuance.

The amendments add license conditions to include the Commission-approved physical security plan as part of the licenses.

The licensee's filings comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

The licensee's filings dated January 4, 1978, as revised September 25, 1978, February 2 and March 29, 1979, and the Commission's Security Plan Evaluation Report are being withheld from public disclosure pursuant to 10 CFR 2.790(d). The withheld information is subject to disclosure in accordance with the provisions of 10 CFR § 9.12.

For further details with respect to this action, see (1) Amendment Nos. 37 and 42 to License Nos. DPR-24 and DPR-27, and (2) the Commission's related letter to the licensee dated April 13, 1979.

These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the University of Wisconsin, Stevens Point Library, Stevens Point, Wisconsin 54481. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 13th day of April, 1979.

For the Nuclear Regulatory Commission.

A. Schwencer, Chief,

Operating Reactors Branch #1 Division of Operating Reactors.

[Docket Nos. 50-266 and 50-301]

[FR Doc. 79-12485 Filed 4-20-79; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Agency Forms Under Review

Background

When executive departments and agencies propose public use forms, reporting, or recordkeeping requirements, the Office of Management and Budget (OMB) reviews and acts on those requirements under the Federal Reports Act (44 USC, Chapter 35). Departments and agencies use a number of techniques including public hearings to consult with the public on significant reporting requirements before seeking OMB approval. OMB in carrying out its responsibility under the Act also considers comments on the forms and recordkeeping requirements that will affect the public.

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Every Monday and Thursday OMB publishes a list of the agency forms received for review since the last list was published. The list has all the entries for one agency together and grouped into new forms, revisions, or extensions. Each entry contains the following information:

The name and telephone number of the agency clearance officer;

The office of the agency issuing this form;

The title of the form;

The agency form number, if applicable;

How often the form must be filled out;

Who will be required or asked to report;

An estimate of the number of forms that will be filled out;

An estimate of the total number of hours needed to fill out the form; and

The name and telephone number of the person or office responsible for OMB review.

Reporting or recordkeeping requirements that appear to raise no significant issues are approved promptly. In addition, most repetitive reporting requirements or forms that require one half hour or less to complete and a total of 20,000 hours or less annually will be approved ten business days after this notice is published unless specific issues are raised; such forms are identified in the list by an asterisk (*).

Comments and Questions

Copies of the proposed forms and supporting documents may be obtained from the agency clearance officer whose name and telephone number appear under the agency name. Comments and questions about the items on this list should be directed to the OMB reviewer or office listed at the end of each entry.

If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the reviewer of your intent as early as possible.

The timing and format of this notice have been changed to make the publication of the notice predictable and to give a clearer explanation of this process to the public. If you have comments and suggestions for further improvements to this notice, please send them to Stanley F. Morris, Deputy Associate Director for Regulatory Policy and Reports Management, Office of Management and Budget, 726 Jackson

Place, Northwest, Washington, D.C. 20503.

DEPARTMENT OF COMMERCE

Agency Clearance Officer—Edward Michaels—377–4217

Extensions

National Oceanic and Atmospheric Administration
*Report of radio transmitting antenna construction, alteration and or removal
NOAA 76–10
On occasion
Owner of transmitting towers IIC. By FCC; 3,200 responses; 800 hours
David P. Caywood, 395–6140

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—John Kalagher—755–5184

New Forms

Housing Production and Mortgage Credit
Operation subsidy requisition for partial payments of Public Housing Urban Initiative Program (PHUIP)
HUD—53120
Quarterly
Public Housing Agencies; 240 responses; 240 hours
Arnold Strasser, 395–5080
Policy Development and Research
Code and financing study of Earth sheltered housing
Single time
Organ. and Instit. that are in the home financing business; 2,500 responses; 2,570 hours
Arnold Strasser, 395–5080

Extensions

Housing Management
*Cost of handling mortgages insured under section 235
Annually
Members of the mortgage banking industry; 3,000 responses; 1,500 hours
Arnold Strasser, 395–5080
Housing Management
Nonoccupancy assignments under section 235
HUD—9828 and HUD—9828E
Monthly
Lender's holding HUD—insured mortgages; 18,000 responses; 16,200 hours
Arnold Strasser, 395–5080

DEPARTMENT OF JUSTICE

Agency Clearance Officer—Donald E. Larue—376–8283

New Forms

Offices, Boards, Division
Claim for damage, injury of death
SF–95
On occasion
People with grievances against U.S. Government; 800,000 responses; 400,000 hours
C. Louis Kincannon, 395–3772

Extensions

Immigration and Naturalization Service
Application for Certificate of Citizenship
N–600
On occasion
Citizens who derived citizenship at or after birth; 32,442 responses, 32,442 hours
C. Louis Kincannon, 395–3772

DEPARTMENT OF LABOR

Agency Clearance Officer—Philip M. Oliver—523–6341

New Forms

Departmental and Other
Survey of Community Conditions in Coal Producing Areas
PCC–1
Single time
Coal miners; 2,000 responses, 1,000 hours
Arnold Strasser, 395–5080

DEPARTMENT OF TRANSPORTATION

Agency Clearance Officer—Bruce H. Allen—426–1887

Revisions

Federal Aviation Administration
Air Taxi Operators and Commercial Operators
FAR Part 135
On occasion
Air taxi operators; 37,770 responses, 96,350 hours
Susan B. Geiger, 395–5867

EXECUTIVE OFFICE OF THE PRESIDENT, OTHER

Agency Clearance Officer—Roy A. Nierenberg—456–6286

New Forms

Report on Prices, Sales, and Profits
PM–1
Quarterly
Manufacturers retail; 6,000 responses, 12,000 hours
Arnold Strasser, 395–5080

OFFICE OF PERSONNEL MANAGEMENT

Agency Clearance Officer—John P. Weld—632–7737

Extensions

PMIP Panel Member Questionnaire
IP–37
Single time
Individuals who served on PMIP screening panels; 500 responses, 250 hours
Marsha D. Traynham, 395–6140

VETERANS ADMINISTRATION

Agency Clearance Officer—R. C. Whitt—389–2282

Extensions

*Application for Cash Surrender Value (Government Life Insurance)
29–1546
On occasion
Insured veterans; 4,000 responses, 666 hours
David P. Caywood, 395–6140

Stanley E. Morris,
Deputy Associate Director for Regulatory Policy and Reports Management.

[FR Doc. 79–12519 Filed 4–20–79; 8:45 am]
BILLING CODE 3110–01–M

Agency Forms Under Review

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DEPARTMENT OF DEFENSE

Agency Clearance Officer—John V. Wenderoth—697-1195

Revisions

Defense Supply Agency
Industrial Security Survey/Inspection Report (Commercial Carrier)
DIA-1148
On occasion
Contractor facilities; 816 responses, 1,632 hours
David P. Caywood, 395-6140

DEPARTMENT OF ENERGY

Agency Clearance Officer—Albert H. Linden—566-9021

New Forms

Prime Supplier's Monthly Report of Total Supply and Stocks
EIA-169
On occasion
Prime suppliers; 3,600 responses, 9,000 hours
Jefferson B. Hill, 395-5867

Extensions

Petroleum Industry Monthly Report for Product Prices
FEA-P302-M-1
Monthly
Gas plant operators, petroleum refiner, reseller/retailers; 3,600 responses, 212,400 hours
Jefferson B. Hill, 395-5867

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Agency Clearance Officer—Peter Gness—245-7488

New Forms

Health Care Financing Administration (Departmental)
Boston Community Health Plan Marketing Survey
HCFA-118T
Single time
Title XVIII/XIX beneficiaries; 8,000 responses, 4,000 hours
Richard Eisinger, 395-3214

Health Care Financing Administration (Departmental)
Evaluation of Second Surgical Opinion Programs for Elective Surgery HCFA-3, L-3, 3A; 4, L-4; 5, L-5; 6, L-6
Single time
Admin. of second surg. op. programs and patients req. SSOP; 6,732 responses; 2,086 hours
Richard Eisinger, 395-3214

Public Health Service
Evaluation of the On Line Search Process
Single time
Librarians and information specialists; 816 responses, 1,110 hours
Richard Eisinger, 395-3214

Public Health Service
Directory on Smoking and Health Research
CDC 16.5, Rev. 5-77
Single time
Scientists engaged in research; 2,300 responses, 766 hours
Off. of Federal Statistical Policy and Standard, 673-7974

Social Security Administration
*Application for Certificate of Coverage
SSA-4569
On occasion
Employ., employees or self-employ. working in Italy; 5,000 responses, 583 hours
Barbara F. Young, 395-6132

Social Security Administration
*Election of Coverage
SSA-4570
On occasion
Ital. citiz. and dual nat'l (U.S. Ital.) permitted an elec. co.; 1,000 responses, 83 hours
Barbara F. Young, 395-6132

Revisions

Health Care Fiancing Administration (Medicare)
Acute Care Provider Surveys
HCFA-19T, 117T
Single time
Hosp. and nursing home admin.; 908 responses, 348 hours
Richard Eisinger, 395-3214

Extensions

Health Care Financing Administration (Departmental)
Physical Therapist in Independent Practice Survey Report
HCFA-3042
On occasion
Phys. therap. in indep. pract. under medicare/medicaid; 2,000 responses, 4,000 hours
Richard Eisinger, 395-3214

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Agency Clearance Officer—John Kalagher—755-5184

Extensions

Administration (Office of Ass't Sec'y)
*Application for Insurance Benefits and General Assignment
HUD 2777, 2777A, and 2777B
On occasion
FHA approved mortgagees; 5,000 responses, 2,500 hours
Arnold Strasser, 395-5080

Housing Management
Report on Program Utilization Section 8 Housing Assistance Payments Program New Construction and Substantial Rehabilitation
HUD-52684
Monthly; 6,000 responses, 1,500 hours
Arnold Strasser, 395-5080

Housing Production and Mortgage Credit
Section 8 Housing Assistance Payments Program Application for Existing Housing
HUD-52515
On occasion
PHAS desiring to admin. the sec. 8 exist. housing prog.; 1,200 responses, 1,200 hours
Arnold Strasser, 395-5080

DEPARTMENT OF LABOR

Agency Clearance Officer—Philip M. Oliver—523-6341

New Forms

Bureau of Labor Statistics
Consumer Expenditure Surveys
CE-801, 802, 803(L)
Other

Households in 102 selected areas; 5,470 responses, 28,717 hours
Arnold Strasser, 395–5080
Employment and training Administration
Uses Employer Relations Program Evaluation—Employer Survey
MT–1071
Single time
Employers in eight cities with pop. between 100,000 to 1,000,000; 4,500 responses, 570 hours
Arnold Strasser, 395–5080

AGENCY FOR INTERNATIONAL DEVELOPMENT

Agency Clearance Officer—Linwood A. Rhodes—632–0036

Extensions

Contractor Employee Biographical Data Sheet Est.
AID 1420–17
On occasion
Contractor employees; 4,000 responses, 4,000 hours
Marshal D. Traynham, 395–6140
Administration (Office of Ass't Sec'y)
*Notice of Property Transfer and Application for Insurance Benefits
HUD 1052
On occasion
FHA approved mortgagees; 25,000 responses, 6,250 hours
Arnold Strasser, 395–5080
Administration (Office of Ass't Sec'y)
*Title I Claim for IOSS
HUD–637
On occasion
Banks, savings, and loans, etc.; 18,000 responses, 9,000 hours
Arnold Strasser, 395–5080
Administration (Office of Ass't Sec'y)
*Fiscal Data To Support Claim for Insurance Benefits
HUD 2767
On occasion
FHA approved mortgagees; 25,000 responses, 12,500 hours
Arnold Strasser, 395–5080
Housing Management
*Report on Program Utilization, Section 8 Housing Assistance Payments Program, Existing Housing
HUD–52683
Monthly
Sec. 8 existing public housing agencies; 12,000 responses, 3,000 hours
Arnold Strasser, 395–5080
Housing Management *Statement of Local Authority as to Compliance Under Title VI of the Civil Rights act of 1964
HUD–53037
On occasion
Public housing agencies; 12 responses, 3 hours
Arnold Strasser, 395–5080
*Application for Approval of Commodity Eligibility
AID 11
On occasion
Commercial; 300 responses, 75 hours
Marsha D. Traynham, 395–6140

FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE U.S.

Agency Clearance Officer—F. T. Masterson—653–6155

New Forms

Statement of Claim
FCSC 780–2
Single time
Amer. cit. whose prop. were confis. by Peop. of Rep. China; 500 responses, 500 hours
Marsha D. Traynham, 395–6140

Stanley E. Morris,
Deputy Associate Director for Regulatory Policy and Reports Management.

[FR Doc. 79-12520 Filed 4-20-79; 8:45 am]

BILLING CODE 3110-01-M

Privacy Act; New Systems

The purpose of this notice is to give members of the public an opportunity to comment on Federal agency proposals to establish or alter personal data systems subject to the Privacy Act of 1974.

The Act states that "each agency shall provide adequate advance notice to Congress and the Office of Management and Budget of any proposal to establish or alter any system of records in order to permit an evaluation of the probable or potential effect of such proposal on the probable or potential effect of such proposal on the privacy and other personal or property rights of individuals * * *"

OMB policies implementing this provision require agencies to submit reports on proposed new or altered systems to Congress and OMB 60 days prior to the issuance of any data collection forms or instructions, 60 days before entering any personal information into the new or altered systems, or 60 days prior to the issuance of any requests for proposals for computer and communications systems or services to support such systems—whichever is earlier.

The following reports on new or altered systems were received by OMB between April 2, 1979 and April 13, 1979. Inquiries or comments on the proposed new systems or changes to existing systems should be directed to the designated agency point-of-contact and a copy of any written comments provided to OMB. The 60 day advance notice period begins on the report date indicated.

Department of Health, Education, and Welfare

System Name: Personal Identification Number File.
Report Date: April 3, 1979.
Point-of-Contact: Mr. Tim Braithwaite, SSA Systems Security Officer, 6401 Security Boulevard, Baltimore, Md. 21235.
Summary: The Social Security Administration proposes this new system of records as part of its security program for the SSADARS, and ARS telecommunication systems. The PIN File will identify users of the system and provide a transaction history for the systems.
System Name: Record of Individuals Authorized Entry to Secured Electronic Data Processing Area.
Report Date: April 3, 1979.
Point-of-Contact: Mr. Ralph Murdy, Chief, Protective Security Branch, Office of Management, Budget, and Personnel, 6401 Security Boulevard, Baltimore, Md. 21235.
Summary: This new system is a part of SSA's computer security program, and will be used to record traffic flow into and out of the data processing area at SSA facilities.

Department of Commerce

System Name: Work Schedule Study Interview Records.
Report Date: April 6, 1979.
Point-of-Contact: Mr. Donald S. Budowsky, Office of Organization and Management Systems, Department of Commerce, Washington, D.C. 20230.
Summary: This new system of records will be maintained as part of a survey and study of the effect of work schedules on families, especially flexible work schedules. The record subjects will be Maritime Administration and Economic Development Administration employees. the data will be aggregated and no individual identifers will be released.
Waiver Request: OMB procedures permit a waiver of the advance notice requirement when the agency can show that the delay caused by the 60 day advance notice would not be in the public interest. It should be noted that a waiver of the 60 day advance notice period does not relieve an agency of the obligation to publish notice describing the system and to allow 30 days for public comment on the proposed routine uses of the personal information to be collected. A waiver of the 60 day advance notice provision was requested by agencies for the following reports

received between April 2, 1979 and April 13, 1979. Public inquiries or comments on the proposed new or altered systems should be directed to the designated agency point-of-contact and a copy of any written comments provided to OMB. Comments on the operation of the waiver procedure should be directed to OMB.

Postal Service

System Name: Skills Bank (Human Resources).

Report Date: April 4, 1979.

Point-of-Contact: Mr. Leroy Hinton, Senior Records Management Analyst, Postal Service, Washington, D.C. 20260.

Summary: This system of records will be used to support the new Postal Career Executive Service (PCES), which is an analog to the Senior Executive Service. It will include work history and other background data on Postal Service employees, and will be used for employee placement, career planning, training, and for the development of personnel management statistics.

Waiver Status: No action as of April 13th.

David R. Leuthold,
Budget and Management Officer.
[FR Doc. 79-12387 Filed 4-20-79; 8:45 am]
BILLING CODE 3110-01-M

POSTAL RATE COMMISSION

Keyapaha, S. Dak. 57545, E. Marie Lawler, Petitioner; Notice and Order of Filing of Appeal

Issued April 17, 1979.

On April 11, 1979, the Commission received a handwritten letter from E. Marie Lawler, a citizen of Keyapaha, South Dakota (hereinafter "Petitioner"), concerning the alleged plans of the United States Postal Service to close the Keyapaha, South Dakota post office. Although the letter makes no explicit reference to the Postal Reorganization Act, we believe it should be liberally construed as a petition for review pursuant to section 404(b) of the Act [39 U.S.C. 404(b)]. We do so in order to preserve the petitioner's right to appeal, which is subject to a 30-day time limit.[1] The petition apparently was written by a layman, rather than by an attorney, and it does not conform exactly to the Commission's rules of practice, which also require that a petitioner attach to the petition a copy of the Postal Service's Final Determination.[2] However, § 1 of the Commission's rules of practice calls for a liberal construction of the rules to secure just and speedy determination of issues.[3]

The Act requires that the Postal Service provide the affected community with at least 60 days' notice of a proposed post office closing so as to "* * * insure that such persons will have an opportunity to present their views."[4] In effect, the petition can reasonably be construed as a request that the decision to close the Keyapaha post office be reversed. From the face of the petition it is unclear whether the Postal Service provided 60 days' notice, whether any hearings were held, or whether a determination has been made under 39 U.S.C. 403(b)(3). (Petitioner failed to supply a copy of the Postal Service's Final Determination, if one is in existence.) The Commission's rules of practice require the Postal Service to file the administrative record of the case within 15 days after the date on which the petition for review is filed with the Commission.[5]

The Postal Reorganization Act states:

> The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating at a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.[6]

Section 404(b)(2)(C) of the Act specifically includes consideration of this goal in determinations by the Postal Service to close post offices. The effect on the community is also a mandatory consideration under section 404(b)(2)(A) of the Act.

The petition contends that the postal center at Keyapaha is very important. It is requested that a community post office be substituted if the Keyapaha post office cannot be retained. The petition appears to set forth the Postal Service action complained of in sufficient detail to warrant a determination whether the Service complied with its own regulations for the closing of post offices.[7]

Upon preliminary inspection, the petition appears to raise the following issue of law:

> Does the effect of a Postal Service proposal [to close or consolidate a post office] on the expectations of retiring Postal Service employees, where the expectations concern a relationship between retirement and a subsequent closing or consolidation, constitute a justiciable issue within the scope of 39 U.S.C. 404(b)(2)(B)?

Other issues of law may become apparent when the Commission has had the opportunity to examine the determination made by the Postal Service. Conversely, the determination may be found to resolve adequately the issue described above.

In view of the above, and in the interest of expedition of this proceeding under the 120-day decisional deadline imposed by section 404(b)(5), the Postal Service is advised that the Commission reserves the right to request a legal memorandum from the Service on one or more of the issues described above, and/or any further issues of law disclosed by the determination made in this case. In the event that the Commission finds such memorandum necessary to explain or clarify the Service's legal position or interpretation on any such issue, it will, within 15 days of receiving the determination and record pursuant to § 113 of the rules of practice (39 CFR § 3001.113), make the request therefor by order, specifying the issues to be addressed.

When such a request is issued, the memorandum shall be due within 15 days of its issuance, and a copy of the memorandum shall be served on petitioner(s) by the Service.

In briefing the case, or in filing any motion to dismiss for want of prosecution in appropriate circumstances, the Service may incorporate by reference all or any portion of a legal memorandum filed pursuant to such an order.

The Act does not contemplate appointment of an Officer of the Commission in § 404(b) cases, and none is being appointed.[8]

The Commission Orders:

(A) The letter of April 11, 1979, from E. Marie Lawler shall be construed as a petition for review pursuant to § 404(b) of the Act [39 U.S.C. 404(b)].

(B) The Secretary of the Commission shall publish this Notice and Order in the Federal Register.

(C) The Postal Service shall file the administrative record in this case on or before April 26, 1979, pursuant to the Commission's rules of practice [39 CFR § 3001.113(a)].

[1] 39 U.S.C. § 404(b)(5). 39 U.S.C. § 404(b) was added to title 39 by Pub. L. 94-421 (September 24, 1976), 90 Stat. 1310-1311. Our rules of practice governing these cases appear at 39 C.F.R. § 3001.110 *et seq.*

[2] 39 C.F.R. § 3001.111(a).

[3] 39 C.F.R. § 3001.1.

[4] 39 U.S.C. § 404(b)(1).

[5] 39 C.F.R. § 3001.113(a). The Postal Rate Commission informs the Postal Service of its receipt of such an appeal by issuing PRC Form No. 56 to the Postal Service upon receipt of each appeal.

[6] 39 U.S.C. § 101(b).

[7] 42 Fed. Reg. 59079-59085 (11/17/77); the Commission's standard of review is set forth at 39 U.S.C. § 404(b)(5).

[8] In the Matter of Gresham, S.C., Route No. 1, Docket No. A78-1 (May 11, 1978).

By the Commission.

David F. Harris,
Secretary.

Appendix

April 11, 1979: Filing of Petition.
April 17, 1979: Notice and Order of Filing of Appeal.
April 26, 1979: Filing of record by Postal Service. [*See* 39 CFR § 3001.113(a).]
May 1, 1979: Last day for filing of petitions to intervene. [*See* 39 CFR § 3001.111(b).]
May 11, 1979: Petitioner's initial brief. [*See* 39 CFR § 3001.115(a).]
May 29, 1979: Postal Service answering brief. [*See* 39 CFR § 3001. § 3001.115(b).]
June 13, 1979:
(1) Petitioner's reply brief, if petitioner chooses to file such brief. [*See* 39 CFR § 3001.115(c).]
(2) Deadline for motions by any party requesting oral argument. The Commission will exercise its discretion, as the interests of prompt and just decision may require, in scheduling or dispensing with oral argument.
August 9, 1979: Expiration of 120-day decisional schedule. [*See* 39 U.S.C. § 404(b)(5).]

[Order No. 263; Docket No. A79-15]
[FR Doc. 79-12453 Filed 4-20-79; 8:45 am]
BILLING CODE 7715-01-M

Notice of Vists to Postal Facilities

April 17, 1979.

Notice is hereby given that members of the Postal Rate Commission advisory staff will make visits to the following postal facilities for the purpose of acquiring general background knowledge of postal operations.

April 24—Dallas BMC
April 25—Atlanta BMC
April 26—Greensboro BMC

A report of the visits will be on file in the Commissioner's Docket Room.

David F. Harris,
Secretary.
[FR Doc. 79-12452 Filed 4-20-79; 8:45 am]
BILLING CODE 7715-01-M

SMALL BUSINESS ADMINISTRATION

Idaho; Declaration of Disaster Loan Area

The above numbered Declaration (see 44 F.R. 10169) is amended by adding the following counties:

County	Natural Disaster(s)	Date(s)
Benewah	Continuous rain	July 1 to Sept. 30, 1978.
Clearwater	Continuous rain	Aug. 15 to Sept. 15, 1978.
Kootenai	Excessive rain	May 1 to June 30, 1978.
Do	Excessive rain	Aug. 12 to Sept. 30, 1978.
Latah	Excessive rain	April 1 to May 31, 1978.
Do	Drought	Aug. 1 to Aug. 15, 1978.
Do	Excessive rain	Aug. 15 to Sept. 30, 1978.
Lewis	Excessive rain	April 1 to May 30, 1978.
Do	Hailstorms	May 21, June 22, July 9, and July 16, 1978.
Do	Excessive rain	July 1 to Sept. 15, 1978.

and adjacent counties within the State of Idaho as a result of natural disasters as indicated. Applications will be processed under the provisions of Public Law 95-89. All other information remains the same, i.e., the termination date for filing applications for physical damage is close of business on July 30, 1979, and for economic injury until the close of business on October 30, 1979.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 2, 1979.

[Declaration of Disaster Loan Area 1559; Amt. 1]

William H. Mauk, Jr.,
Acting Administrator.
[FR Doc. 79-12502 Filed 4-20-79; 8:45 am]
BILLING CODE 8025-01-M

Illinois; Declaration of Disaster Loan Area

The above numbered Declaration (see 44 FR 21721), is amended by adding Boone, Bureau, Calhoun, Cass, DeKalb, DuPage, Fulton, Grundy, Henry, Kane, Kendall, Lake, LaSalle, Lee, Marshall, Mason, McHenry, Morgan, Ogle, Peoria, Pike, Putnam, Rock Island, Schuyler, Whiteside, Will, and Woodford Counties and adjacent counties within the State of Illinois, which constitute a disaster area because of damage resulting from snowmelt, ice jams, rain and flooding on or about March 15, 1979 through March 26, 1979. The incidence period for the following 9 counties has been extended from March 1, 1979 through March 26, 1979.

Cook, DeWitt, Douglas, Iroquois, Kankakee, Peoria, Tazewell, Will, Woodford.

All other information remains the same; i.e., the termination date for filing applications for physical damage is close of business on May 29, 1979, and for economic injury until the close of business on December 27, 1979.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 6, 1979.

Paul D. Sullivan,
Acting Administrator.

[Declaration of Disaster Loan Area 1602, Amdt. 1]
[FR Doc 79-12501 Filed 4-20-79; 8:45 am]
BILLING CODE 8025-01-M

Montana; Declaration of Disaster Loan Area

Musselshell County and adjacent counties within the State of Montana constitute a disaster area as a result of damage caused by ice jams and flooding which occurred on March 9, 1979. Applications will be processed under provisions of Public Law 94-305. Interest rate is 7⅜ percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on June 15, 1979, and for economic injury until close of business on January 15, 1980, at:

Small Business Administration, District Office, 301 South Park, Rm. 528, Federal Office Building, Helena, Montana 59601.

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002. and 59008.)

Dated: April 13, 1979.

A. Vernon Weaver,
Administrator.

[Declaration of Disaster Loan Area 1612]
[FR Doc. 79-12503 Filed 4-20-79; 8:45 am]
BILLING CODE 8025-01-M

Rhode Island; Declaration of Disaster Loan Area

The third sentence of the above numbered declaration (see 43 F.R. 57715) is hereby amended as follows: "Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on *May 9, 1979,* and for economic injury until close of business on *September 5, 1979,* at: . . ."

(2) (Declaration of Disaster Loan Area No. 1550)

Washington

Correction No. 2

For F.R. Doc. 78-34848, appearing on page 58692 in the issue of Friday, December 14, 1978, and 44 F.R. 3599, appearing in the issue of Wednesday, January 17, 1979, the headings should read as set forth above.

(3) (Declaration of Disaster Loan Area No. 1553)

West Virginia

Amendment No. 1

Declaration of Disaster Loan Area

The above numbered declaration (see 44 F.R. 140) is hereby amended by substituting "September 14, 1979," for "July 14, 1979," for accepting applications for economic injury damage.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59009.)

Dated: April 13, 1979.

A. Vernon Weaver,
Administrator.

[Declaration of Disaster Loan Area 1547; Amdt. 1]
[FR Doc. 79-12504 Filed 4-20-79; 8:45 am]
Billing Code 8025-01-M

Yosemite Capital Investment Co.; Application for a License To Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by Yosemite Capital Investment Company (applicant) with the Small Business Administration pursuant to 13 C.F.R. 107.102 (1978).

The officers and directors are as follows:

Horace Hampton, President and General Manager, 810 E. Belgravia Avenue, Apt. C, Fresno, California 93706.
Earl Brown, Chairman of the Board, 5487 E. Mono Street, Fresno, California 93705.
Jack Crews, Treasurer, 934 West Michigan Avenue, Fresno, California 93705.
William A. Buzik, Jr., Vice President, 6533 N. Van Ness Blvd., Fresno, California 93711.
Margaret Aytes, Secretary, 2443 Stanislaus Street, Fresno, California 93721.

The applicant will maintain its offices at 448 Fresno Street, Fresno, California 93706. It will begin operations with private capital of $305,000 derived from the sale of 3,053 shares of stock to no more than 20 stockholders. It is anticipated that the private capital will be increased to $500,000 shortly after licensing.

Fresno Resources Development Company will own approximately 83 percent of the intial stock issued by the applicant.

Fresno Resources Development Company is owned by Fresno Development Company and other individuals. None of the individuals own 10% or more of the stock in Fresno Resources Development Company.

Fresno Development Company is a non-profit California Chartered Corporation with seventeen (17) shareholders. Shareholders of Fresno Development Company are not beneficial owners of this non-profit corporation stock, but more correctly serve as trustees. Fresno Development Company will own 83 percent of the common stock of Fresno Resources Development Company.

No public body or government agency is a shareholder of Fresno Development Company and no public funds are included in the assets of Fresno Development Company.

The applicant will conduct its operations in the State of California.

As a small business investment company under Section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, on or before May 8, 1979, submit to SBA written comments on the proposed applicant. Any such communications should be addressed to the Acting Director, Office of the Investment Division, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Fresno, California.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

April 17, 1979.

Peter F. McNeish,
Deputy Associate Administrator for Investment.
[FR Doc. 79-12505 Filed 4-20-79; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airport Traffic Control Tower at Williamsport-Lycoming County Airport, Montoursville, Pa.; Reduced Hours of Operation

Notice is hereby given that the Airport Traffic Control Tower at Williamsport-Lycoming County Airport, Montoursville, Pennsylvania, has reduced its hours of operation effective March 31, 1979. Hours of operation are 6 a.m. to 12 midnight daily.

(Sec. 313(a) of the Federal Aviation Act of 1958, 72 Stat. 752, 49 U.S.C. 1354)

Issued in New York, New York, on April 11, 1979.

Brian J. Vincent,
Acting Director.
[FR Doc. 79-12572 Filed 4-20-79; 8:45 am]
BILLING CODE 4910-13-M

Informal Airspace; Meeting No. 5

May 23, 1979

TIME: 7:00 p.m.

PLACE: Spartan School of Aeronautics, 8820 East Pine, Tulsa, Oklahoma.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Proposed Terminal Control Area (TCA) for International Airport, Tulsa, Oklahoma.

COMMENTS: No verbatim minutes or transcripts will be taken. However, participants may submit written comments to be made a matter of record if they so desire. This action will not prevent participants from submitting comments later in response to a Notice of Proposed Rule Making (NPRM) in the event the item is formally proposed. Public comments are invited at this meeting on development of the proposed TCA configuration.

FOR FURTHER INFORMATION CONTACT: Kenneth L. Stephenson, Airspace and Procedures Branch (ASW-535), Air Traffic Division, Southwest Region, Federal Aviation Administration, P.O. Box 1689, Fort Worth, Texas 76101; telephone (817) 624-4911, extension 302.

Ralph L. Frick,
Chief, Airspace and Procedures Branch, ASW-530, Southwest Region.
[FR Doc 79-12573 Filed 4-20-79; 8:45 am]
BILLING CODE 4910-13-M

Informal Airspace Meeting No. 2, May 2, 1979

Correction

In FR Doc. 79-11670 appearing at page 22549 in the issue of Monday, April 16, 1979, the date was inadvertently left out

of the heading and is corrected as set forth above. Also, the file line was omitted and should read as follows:

"[FR Doc. 79-11670 Filed 4-13-79; 8:45 am]"

BILLING CODE 1505-01-M

Federal Railroad Administration

Minority Business Resource Center Advisory Committee Meeting

Pursuant to section 19(a) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Minority Business Resource Center Advisory Committee to be held May 22, 1979, at 10:00 a.m. until 1:00 p.m. at the Department of Transportation, 400 7th Street, Southwest, Room 4234, Washington, D.C. 20590. The agenda for the meeting is as follows: Marketing Assistance Clearinghouse Program Review, Venture Capital Program, Local Outreach Center, Business Development, Progress of MBE Railroad Procurement Report.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify the Minority Business Resource Center not later than the day before the meeting. Information pertaining to the meeting may be obtained from Mr. Harvey C. Jones, Advisory Committee Staff Assistant, Minority Business Resource Center, Federal Railroad Administration, 400 7th Street, Southwest, Washington, D.C. 20590, telephone: (202) 426-2852. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, D.C., on April 18, 1979.

Kenneth E. Bolton,

Executive Director.

[FR Doc. 79-12460 Filed 4-20-79; 8:45 am]

Billing Code 4910-06-M

Materials Transportation Bureau

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of Applications for Renewal or Modification of Exemptions or Application To Become a Party to an Exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes May 8, 1979.

ADDRESSED TO: Dockets Branch, Information Services Division, Materials Transportation Bureau, U.S. Department of Transportation, Washington, D.C. 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 6500, Trans Point Building, 2100 Second Street, S.W., Washington, D.C.

Application No.	Applicant	Renewal of exemption
2805-X	SunOlin Chemical Co., Claymont, Del	2805
2805-X	Great Lakes Chemical Corp., El Dorado, Ark.	2805
2675-X	ORB Industries, Inc., Upland, Pa	2675
4400-X	Airco Industrial Gases, Murray Hill, N.J.	4400
5520-X	Amchem Products, Inc., Ambler, Pa. (See Footnote 1).	5520
5662-X	Great Lakes Chemical Corp., El Dorado, Ark.	5662
6007-X	S. S. White, Holmdel, N.J	6007
6016-X	Strate Welding Supply Co., Inc., Buffalo, N.Y	6016
6016-X	Huber Supply Co., Mason City, Iowa	6016
6637-X	Advanced Chemical Technology, City of Industry, Calif. (See Footnote 2).	6637
6657-X	Chemetron Industrial Gases, Chicago, Ill.	6657
6787-X	Advanced Chemical Technology, City of Industry, Calif. (See Footnote 3).	6787
6790-X	Dow Chemical Co., Freeport, Tex	6790
6793-X	Hickson & Welch Ltd., Castleford, Yorkshire, England.	6793
6874-X	ICI Americas Inc., Wilmington, Del. (See Footnote 4).	6874
6958-X	Great Lakes Chemical Corp., El Dorado, Ark.	6958
7005-X	Logemafer, S.A., Paris, France	7005
7010-X	Bienwerk Goslar KG, Federal Republic, Germany.	7010
7010-X	Great Lakes Chemical Corp., El Dorado, Ark.	7010
7082-X	Igloo Corp., Houston, Tex	7082
7192-X	Air Products and Chemicals, Inc., Allentown, Pa. (See Footnote 5).	7192
7252-X	E. I. du Pont de Nemours & Co., Inc., Wilmington, Del.	7252
7413-X	Chilton Metal Products Division, Chilton, Wis.	7413
7555-X	Provost Cartage Inc., Ville D'Anjou, Quebec, Canada.	7555
7774-X	Weatherford/DMC, Inc., Houston, Tex.	7774
7931-X	Degussa, Frankfurt, West Germany	7931
4600-P	Halocarbon Products Corp., Hackensack, N.J.	4600
5322-P	LNG Services, Inc., Pittsburgh, Pa	5322
6296-P	Platte Chemical Co., Fremont, Neb	6296
6397-P	The Harshaw Chemical Co., Cleveland, Ohio.	6397
6922-P	E. I. du Pont de Nemours & Co., Inc., Wilmington, Del.	6922
6984-P	Explo-Midwest, Inc., Joplin, Mo	6984
7052-P	Panasonic Co., Secaucus, N.J	7052
7052-P	Westinghouse Electric Corp., Raleigh, N.C.	7052
7269-P	Rockwell International Corp., Canoga Park, Calif.	7269
7503-P	Transcontainer Leasing S.A., Geneva, Switzerland.	7503
7607-P	E. I. du Pont de Nemours & Co., Inc., Wilmington, Del.	7607
7625-P	Van Waters & Rogers, St. Paul, Minn	7625
7654-P	J. T. Baker Chemical Co., Phillipsburg, N.J.	7654
7753-P	Monsanto Co., St. Louis, Mo	7753
7820-P	Liquor Control Board of Ontario, Toronto, Canada.	7820
7835-P	Scientific Gas Products Inc., South Plainfield, N.J.	7835
7924-P	Panasonic Co., Secaucus, N.J	7924
7893-P	Transcontainer Leasing, S.A., Geneva, Switzerland.	7893
7983-P	Panasonic Co., Secaucus, N.J	7983
7983-P	Sharp Electronics Corp., Paramus, N.J.	7983
8030-P	NL McCullough, Houston, Tex	8030
8055-P	American Cyanamid Co., Bound Brook, N.J.	8055
8055-P	Halstab Division, Hammond, Ind	8055
8125-P	Transport International Containers, S.A., Paris, France.	8125
8126-P	Transport International Containers, S.A., Paris, France.	8126

[1] To authorize shipment by water as an additional mode of transportation.

[2] To authorize the shipment of organic peroxide, liquids or solutions, n.o.s. as additional commodities.

[3] To authorize the shipment of organic peroxide liquids, or solutions, n.o.s. as additional commodities.

[4] Request authorization to ship cyanide mixtures, dry, (potassium and sodium) in the same package.

[5] To renew and to authorize various modification to the safety control measures pertaining to one-way travel time, holding time; and to accommodate various cargo tank changes.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Section 107 of the Hazardous Materials Transportation Act (49 CFR U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, D.C., on April 13, 1979.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 79-12128 Filed 4-20-79; 8:45 am]

BILLING CODE 4910-60-M

National Highway Traffic Safety Administration

Freightliner Corp.; Receipt of Petition for Determination of Inconsequential Noncompliance

Freightliner Corp. of Portland, Oregon, has petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vechicle Safety Act (15 U.S.C. 1381 et seq.) for an apparent noncompliance with 49 CFR 571.121, Motor Vehicle Safety Standard No. 121, *Air Brake Systems*. The basis of the petition is that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the Act (15 U.S.C. 1417) and does not represent any agency decision or exercise of judgment concerning the merits of the petition.

Paragraph S5.4.3 of Standard No. 121 establishes brake recovery requirements to be met following the series of decelerations set forth under S5.4.2, specifically, that a vehicle shall be capable of making 20 consecutive stops from 30 mph at an average deceleration rate of 12 feet per second. The service line air pressure needed to attain the deceleration rate must not exceed 85 pounds per square inch for a brake not subject to the control of an antilock system. Freightliner has discovered that some of its brake drums have failed to meet the 85 pounds per square inch specification.

Specifically, Freightliner learned that its brake drum supplier had changed the alloy content of some of its drums by the addition of a small amount of chromium and that this change had affected the performance characteristics of the braking system. Brake tests made at a GAWR of 19,000 pounds met the requirements but those made at 20,000 pounds did not, the four drums tested at the higher GAWR requiring 86, 88, 89, and 92 pounds per square inch to achieve the deceleration.

Petitioner argues that the noncompliance is inconsequential because the drums were used on only 28 trucks. Even though values are higher than the standard's 85 pounds per square inch, they are "well within the capability of the vehicle's air brake system." The drums will reach the end of their usefulness before the middle of 1980, and will be replaced. The noncompliance could not alone adversely affect stopping distance without the occurrence of a separate malfunction such as excessive air leakage in the tractor or trailer, or ruptured brake chamber diaphragm. The vehicles involved operate in combination with two trailers, the combination thereof comprising five braked axles, only one of which is noncompliant. Finally, as a practical matter, it is not likely that a vehicle would be loaded to its certified GAWR of 20,000 pounds.

Interested persons are invited to submit written data, views, and arguments on the petition of Freightliner Corp. described above. Comments should refer to the Docket number and be submitted to Docket Section, National Highway Traffic Safety Administration, Room 5108, 400 Seventh Street, SW., Washington, D.C. 20590. It is requested but not required that five copies be submitted.

All comments received before the close of business on the comment closing date indicated below will be considered. The application and supporting materials and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice will be published in the Federal Register pursuant to the authority indicated below.

Comment closing date: March 23, 1979.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on April 17, 1979

Michael M. Finkelstein,

Associate Administrator for Rulemaking.

[Docket No. IP79-4; Notice 1]

[FR Doc. 79-12457 Filed 4-20-79; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Office of the Secretary

Delegation of Authority to the Inspector General To Receive Referrals From the Merit Systems Protection Board, and Delegation to the Deputy Secretary, to the Under Secretary and to the Commissioner of Internal Revenue To Sign Final Reports

April 13, 1979.

The Special Counsel to the Merit Systems Protection Board is authorized under section 1206 of the Civil Service Reform Act of 1978, 5 U.S.C. 1206, to receive allegations of prohibited personnel practices and to refer these allegations to the appropriate agency heads for investigation.

Pursuant to the authority vested in me as Secretary of the Treasury, including the authority contained in Reorganization Plan No. 26 of 1950, it is provided as follows:

1. The *Inspector General* is hereby delegated the authority to:

a. Receive all matters referred to the Department of the Treasury by the Special Counsel;

b. Investigate or refer requests for investigation to any bureau, office, or subdivision within the Department if deemed appropriate by the Inspector General;

c. Receive and review reports of investigations by the bureau, office, or subdivision (except for the Internal Revenue Service) conducting such investigation;

d. Prepare final reports to the Special Counsel (exclusive of reports on matters which were referred to the Internal Revenue Service) for the review and signature of the Deputy Secretary or the Under Secretary as the designees of the Secretary; and

e. Promulgate such procedures as are necessary to carry out these functions.

2. The *Deputy Secretary* and the *Under Secretary* are delegated the authority to review and personally sign final reports to the Special Counsel pertaining to all elements of the Treasury Department exclusive of reports prepared by the Internal Revenue Service, such reports to include all items required under section 1206(b)(4) of the Civil Service Reform Act of 1978, 5 U.S.C. 1206.

3. The *Commissioner of Internal Revenue* is delegated the authority to review and personally sign final reports to the Special Counsel on all matters which have been referred to the Internal Revenue Service by the Inspector General, such reports to include all items required under section 1206(b)(4) of the Civil Service Reform Act of 1978, 5 U.S.C. 1206. Copies of such reports shall be forwarded to the Deputy Secretary.

W. Michael Blumenthal,

Secretary of the Treasury.

[No. 101-4]

[FR Doc. 79-12394 Filed 4-20-79; 8:45 am]

BILLING CODE 4810-25-M

Treasury Notes of April 30, 1981; Series S-1981

April 19, 1979.

1. Invitation for Tenders

1.1. The Secretary of the Treasury, under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately $2,500,000,000 of United States securities, designated Treasury Notes of April 30, 1981, Series S-1981, (CUSIP No. 912827 JP 8). The securities will be sold at auction with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of these securities may be issued to Government accounts and Federal Reserve Banks for their own account in exchange for maturing Treasury securities. Additional amounts of the new securities may also be issued at the average price to Federal Reserve Banks, as agents for foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing securities held by them.

2. Description of Securities

2.1. The securities will be dated April 30, 1979, and will bear interest from that date, payable on a semiannual basis on October 31, 1979, and each subsequent 6 months on April 30 and October 31, until the principal becomes payable. They will mature April 30, 1981, and will not be subject to call for redemption prior to maturity.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as to principal and interest, will be issued in denominations of $5,000, $10,000, $100,000, and $1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Standard Time, Tuesday, April 24, 1979. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Monday, April 23, 1979.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is $5,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender and the amount may not exceed $1,000,000.

3.3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in Section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government accounts. Tenders from others must be accompanied by a deposit of 5% of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a ⅛ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 99.500. That rate of interest will be paid on all of the securities. Base on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made or completed on or before Monday, April 30, 1979, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be recieved at such institution no later than:

(a) Friday, April 27, 1979, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Thursday, April 26, 1979, if the check is drawn on a bank in another Federal Reserve District.

Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different form those in the inscriptions or assignments of the securities presented, the assignment should be to "The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

Paul H. Taylor,
Fiscal Assistant Secretary.

[Dept. Circular Public Debt Series-No. 8-79]
[FR Doc. 79-12615 Filed 4-19-79; 12:19 pm]
BILLING CODE 4810-40-M

VETERANS ADMINISTRATION

Clinical Addition; Medical Center; Notice of Availability of Draft Environmental Impact Statement

Notice is hereby given that a document entitled "Draft Environmental Impact Statement for the Veterans Administration, Clinical Addition, Medical Center, Oklahoma City, Oklahoma" dated March 1979, has been prepared as required by the National Environmental Policy Act of 1969.

The preferred location of the Clinical Addition is on the existing Veterans Administration Medical Center near the University of Oklahoma Medical School. The Clinical Addition will have new construction and renovated space. The facility will provide the much needed expansion space at the Medical Center for ambulatory care, radiology, cardiac catheterization, multipurpose and nursey education, specialty clinics and pharmacy.

The Draft Statement discusses the environmental impact of the Clinical Addition for the preferred alternative and discusses other viable alternatives including "No Action". The document is being placed for public examination in the Veterans Administration office in Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, Director, Environmental Affairs Office (66), Room 950, Veterans Administration, 1425 K Street, N.W., Washington, D.C. 20420 (202-389-2526).

Single copies of the Draft Statement may be obtained on request to: Director, Environmental Affairs Office (66), Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420.

Dated: April 17, 1979.

By direction of the Administrator.

Maury S. Cralle, Jr.,
Assistant Deputy Administrator for Financial Management and Construction.

[FR Doc. 79-12455 Filed 4-20-79; 8:45 am]
BILLING CODE 8320-01-M

INTERSTATE COMMERCE COMMISSION

Aberdeen & Rockfish Railroad Co.; Exemption Under Mandatory Car Service Rules

To All Railroads:

It appearing, That certain of the railroads named below own numerous 50-ft. plain boxcars; that under present conditions, there are substantial surpluses of these cars on their lines; that return of these cars to the owners would result in their being stored idle; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, 50-ft. plain boxcars described in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 410, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM," and bearing reporting marks assigned to the railroads named below, shall be exempt from provisions of Car Service Rules 1, 2(a), and 2(b).

Aberdeen and Rockfish Railroad Company
Reporting Marks: AR
Camino, Placerville & Lake Tahoe Railroad Company
Reporting Marks: CPLT
City of Prineville
Reporting Marks: COP
XXX
Duluth, Missabe and Iron Range Railway Company
Reporting Marks: DMIR
East Camden & Highland Railroad Company
Reporting Marks: EACH
Genessee and Wyoming Railroad Company
Reporting Marks: GNWR
Greenville and Northern Railway Company
Reporting Marks: GRN
Lake Superior & Ishpeming Railroad Company
Reporting Marks: LSI
Lenawee County Railroad Company, Inc.
Reporting Marks: LCRC
Louisiana Midland Railway Company
Reporting Marks: LOAM
Louisville and Wadley Railway Company
Reporting Marks: LW
Louisville, New Albany & Corydon Railroad Company
Reporting Marks: LNAC
Manufacturers Railway Company
Reporting Marks: MRS
Middletown and New Jersey Railway Company, Inc.
Reporting Marks: MNJ
New Orleans Public Belt Railroad
Reporting Marks: NOPB
Oregon & Northwestern Railroad Co.
Reporting Marks: ONW
XXX
Pearl River Valley Railroad Company
Reporting Marks: PRV
Peninsula Terminal Company
Reporting Marks: PT
Raritan River Rail Road Company
Reporting Marks: RR
Sacramento Northern Railway
Reporting Marks: SN
St. Lawrence Railroad
Reporting Marks: NSL
Savannah State Docks Railroad Company[1]
Reporting Marks: SSDK
Sierra Railroad Company
Reporting Marks: SERA
Terminal Railway, Alabama State Docks
Reporting Marks: TASD
The Texas Mexican Railway Company
Reporting Marks: TM
Tidewater Southern Railway Company
Reporting Marks: TS
Toledo, Peoria & Western Railroad Company
Reporting Marks: TPW
Vermont Railway, Inc.
Reporting Marks: VTR
WCTU Railway Company
Reporting Marks: WCTR
Youngstown & Southern Railway Company
Reporting Marks: YS
Yreka Western Railroad Company
Reporting Marks: YW

Effective April 1, 1979, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., March 27, 1979.

Interstate Commerce Commission.

Joel E. Burns,
Agent.

[16th Rev. Exemption 90]

[FR Doc. 79-12528 Filed 4-20-79; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Applications

April 11, 1979.

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the Federal Register publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the Federal Register. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Note.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

MC 6461 (Sub-20TA), filed February 13, 1979. Applicant: B-LINE TRANSPORT CO., INC., 7100 E. Broadway, Spokane, WA 99206. Representative: Norman E. Sutherland, 1200 Jackson Tower, Portland, OR 97205. (1) *Commodities which by reason of size or weight require special handling or use of special equipment and commodities which do not require special handling or use of special equipment when moving in the same shipment on the same bill of lading as commodities which by reason of size or weight require special handling or use of special equipment;* and (2) *contractors equipment, materials and supplies* (except commodities in bulk, in tank vehicles), between points in ID, those in that part of WA in and east of Okanogan, Chelan, Kittitas, Yakima and Klickitat Counties, those in that part of MT in and west of Hill, Chouteau, Judith Basin, Meagher, and Park Counties, and those in that part of OR in and east of Wasco, Jefferson, Deschutes, and Klamath Counties, for 180 days. Applicant intends to interline with other carriers at the Ports of Entry along U.S. & Canada border in the States of WA, ID and MT. Supporting shipper(s): There are 6 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 16831 (Sub-26TA), filed February 21, 1979. Applicant: MID SEVEN TRANSPORTATION COMPANY, 2323 Delaware Avenue, Des Moines, IA 50317. Representative: William L.

XXX The Clarendon and Pittsford Railroad Company and Oregon, Pacific and Eastern Railway Company deleted.

[1] Addition.

Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Iron and steel articles* from points in the Chicago, IL, and St. Louis, MO commercial zones to the facilities of Deere & Company at Ottumwa, IA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Deere & Company, John Deere Ottumwa Works, Vine and Madison Streets, Ottumwa, IA 52501. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 21060 (Sub-19TA), filed February 21, 1979. Applicant: IOWA PARCEL SERVICE, INC., 3123 Delaware Avenue, Des Moines, IA 50313. Representative: Harold W. Sternberg (same as applicant). *General commodities* (except those of unusual value, Classes A and B explosives, houehold goods as defined by the Commission, commodities in bulk and those requiring special equipment), between Sioux Falls, SD and points in IA for 180 days. Restricted to the transportation of parcels, packages and articles weighing 200 pounds or less and no service shall be performed in the transportation of any parcels, packages and articles weighing in the aggregate more than 750 pounds from one consignor at one location to one consignee at one location on any one date. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are 17 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 41951 (Sub-39TA), filed February 26, 1979. Applicant: WHEATLEY TRUCKING, INC., P.O. Box 458, Cambridge, MD 21613. Representative: Gary E. Thompson 4304 East-West Highway Washington, DC 20014. *Frozen peppers,* from the facilities of RJR Foods Warehouses, Inc., at Kansas City, KS, to Cambridge, MD, and Jackson, OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): RJR Foods, Inc., Winston-Salem, NC 37101. Send protests to: Carol Rosen, TA, ICC, 600 Arch St., Rm. 3238, Philadelphia, PA 19106.

MC 48441 (Sub-33TA), filed February 16, 1979. Applicant: R.M.E., INC., P.O. Box 418, Streator, IL 61364. Representative: Michael D. Bromley, 805 McLachlen Bank Building, 666 Eleventh Street, NW., Washington, DC 20001. *(1) Pulpboard* from Tomahawk, WI to IL; and *(2) Scrap Paper* from IL and Shakopee, MN to Tomahawk, WI, for 180 days. Supporting shipper(s): Owens-Illinois, Inc., Owens-Illinois Building, Corner Madison and St. Clair, Toledo, OH 43666. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 48441 (Sub-34TA), filed February 26, 1979. Applicant: R.M.E., INC., P.O. Box 418, Streator, IL 61364. Representative: Michael D. Bromley, 805 McLachlen Bank Building, 666 Eleventh Street, N.W., Washington, D.C. 20001. *(1) Pulpboard* from Tomahawk, WI to MN; and *(2) Scrap paper* from MN to Tomahawk, WI, for 180 days. Supporting shipper(s): Owens-Illinois, Inc., Forest Products Division, P.O. Box 1035, Toledo, OH 43666. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 52861 (Sub-52TA), filed February 6, 1979. Applicant: WILLS TRUCKING, INC., 4500 Rockside Road, Cleveland, OH 44131. Representative: John A. Wilson, 3185 Columbia Road, Richfield, OH 44286. *Ammonium sulphate,* in dump vehicles, from Cleveland, OH to Attica; Sharpsville, Greencastle, Reynolds and Briggs, IN and Akron, Bad Axe, Munger, Saginaw and Britton, MI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Republic Steel Corporation, P.O. Box 6778, Cleveland, OH 44101. Send protests to: Mary Wehner, District Supervisor, Interstate Commerce Commission, 1240 E. Ninth Street, Cleveland, OH 44199.

MC 52861 (Sub-53TA), filed February 14, 1979. Applicant: WILLS TRUCKING, INC., 4500 Rockside Road, Cleveland, OH 44131. Representative: John A. Wilson, 3185 Columbia Road, Richfield, OH 44286. *Silica sand,* in dump vehicles, from Wedron, IL to Marion and Ravenna, OH and National Castings at or near Farrell, PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Keener Sand & Clay Company, 21 E. State Street, Columbus, OH 43215. Send protests to: Mary Wehner, D/S, I.C.C., 731 Federal Bldg., Cleveland, OH 44199.

MC 52861 (Sub-54TA), filed February 28, 1979. Applicant: WILLS TRUCKING, INC., 4500 Rockside Road, Cleveland, OH 44131. Representative: John A. Wilson, 3185 Columbia Road, Richfield, OH 44286. *Pebble lime,* in dump vehicles, from Woodville, OH, to Midland, Ludington, and Mainstee, MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Martin Marietta Chemicals, 755 Line Road, Woodville, OH 43469. Send protests to: Mary Wehner, D/S, ICC, 731 Federal Office Building, Cleveland, OH 44199.

MC 52861 (Sub-55TA), filed February 2, 1979. Applicant: WILLS TRUCKING, INC., 4500 Rockside Road, Cleveland, OH 44131. Representative: John A. Wilson, 3185 Columbia Road, Richfield, OH 44286. *Manganese ore,* in dump vehicles, from West Elizabeth, PA to Baltimore, MD for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Jones and Laughlin Steel Corporation, 1600 West Carson Street, Pittsburgh, PA 15263. Send protests to: Mary Wehner, District Supervisor, Interstate Commerce Commission, 1240 E. Ninth Street, Cleveland, OH 44199.

MC 61231 (Sub-139TA), filed February 16, 1979. Applicant: EASTER ENTERPRISES, INC., d.b.a. ACE LINES, INC., P.O. Box 1351, Des Moines, IA 50305. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Paper and paper products* (except in bulk) from (1) Fond du Lac, Green Bay, Marinette, and Oconto Falls, WI, and points in their commercial zones, to points in AR, IL, IA, KS, MN, MO, and NE; (2) Chicago, IL, and points in its commercial zone to points in IA, KS, MN, MO, and NE; and (3) Rogers, AR, and points in its commercial zone, to points in IL, MN, and WI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Scott Paper Company, Scott Plaza I, Philadelphia, PA 19113. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 61470 (Sub-5TA), filed February 28, 1979. Applicant: BRYAN TRUCK LINE, INC., 610 East Wilson Street, Bryan, OH 43506. Representative: James Duvall, 220 West Bridge Street, Dublin, OH 43017. *General commodities,* between Edgerton, OH, on the one hand, and, on the other, Toledo, OH, for 180 days. Common-irregular routes. An underlying ETA seeks 90 days authority. Supporting shipper(s): All Star Products, Inc., 128 Vine Street, Edgerton, OH 43517. Send protests to: Interstate Commerce Commission, Bureau of Operations, 600 Arch Street, Room 3238, Philadelphis, PA 19106.

MC 85970 (Sub-14TA), filed November 22, 1978. Applicant: SARTAIN TRUCK LINE, INC., 1625 Hornbrook Street, Dyersburg, TN 38107. Representative: Warren A. Goff, 2008 Clark Tower, 5100 Poplar Avenue, Memphis, TN 38137. *Common Carrier; regular routes: Rubber, rubber products and such commodities as are manufactured,*

processed or dealt in by manufacturers of rubber and rubber products, and equipment, materials and supplies used in the manufacture of rubber and rubber products, except commodities in bulk, between the facilities of The Goodyear Tire & Rubber Company located at or near Union City, TN, on the one hand, and, on the other, points in the states of NY, NJ, PA, DE, MD, VA, NC, SC, GA, AL, MS, LA, KY, OH, IN, IL, MI, WI, MN, MO, KS, OK and TX, for 180 days. Applicant intends to tack the authority here applied for to authority held by it in MC-85970 and subs thereunder and further intends to interline with other carriers at Memphis, TN; Nashville, TN; St. Louis, MO; Jackson, TN; Fulton, KY; Union City, TN; Alamo, TN; Trenton, TN and Dyersburg, TN. Supporting shipper(s): The Goodyear Tire & Rubber Company, 1144 E. Market Street, Akron, OH 44316. Send protests to: Floyd A. Johnson, District Supervisor; Interstate Commerce Commission, 100 North Main Bldg., Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 95540 (Sub-1092TA), filed February 26, 1979. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Representative: Benjy W. Fincher (same address as applicant). *Foodstuffs,* from Louisville, KY to points in FL for 180 days. Supporting shipper(s): Crofton Company, P.O. Box 11984, Tampa, FL 33680. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission—BOp, Monterey Building, Suite 101, 8410 N.W. 53rd Terrace, Miami, FL 33166.

MC 104430 (Sub-53TA), filed February 5, 1979. Applicant: CAPITAL TRANSPORT CO., INC., P.O. Box 408, Hwy. 24 W., McComb, MS 39648. Representative: Donald B. Morrison, P.O. Box 22628, Jackson, MS 39205. *Liquid animal feed,* in bulk, in tank vehicles, from Westwego, LA to all points in MS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): United States Steel Corporation, USS Agri-Chemicals Div., 233 Peachtree St., N.E., Atlanta, GA 30303. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 109351 (Sub-6TA), filed September 15, 1978, and published in the Federal Register issue of November 13, 1978, and republished as corrected this issue. Applicant: G & E TRUCKING CO., 1230 Taylor, N.E., Grand Rapids, MI 49505. Representative: George A. Pendleton, P.O. Box 51, 5116 Brookgate, N.W., Comstock Park, MI 49321. Authority sought to operate as a *common carrier,* by motor vehicle over irregular routes, transporting: (1) *Finished paper box board,* from Childsdale, MI, to points in Indiana, (except Elkhart, IN, and points in Indiana, in the Chicago, IL, Commercial Zone, as defined by the Commission), to points in Illinois (except points in the Chicago, IL, Commercial Zone, as defined by the Commission), to Lexington, Louisville and Owensboro, KY, and to Appleton, Green Bay, Milwaukee, Sheboygan, Racine, Fond du Lac and Jefferson, WI; (2) Scrap paper, from points in Indiana (except points in Lake and Porter Counties, IN, and those points which are within the Chicago, IL, Commercial Zone, as defined by the Commission), from points in Illinois, (except from points in Cook, DuPage, Henry, Kane, Kankakee, Kendall, Lake and Will Counties, IL), from Lexington, Louisville and Owensboro, KY, and from Appleton, Green Bay, Milwaukee, Sheboygan, Racine, Fond du Lac and Jefferson, WI, to Childsdale, MI, and (3) with authorization to return rejected, damaged or refused commodities as described in 1 and 2 above. Restriction: The authority sought is to be limited to a transportation service to be performed, under a continuing contract, or contracts, with Rockford Paper Mills, Inc., of Childsdale, MI, which lies approximately 2 miles southwest of Rockford, MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Rockford Paper Mills, Inc., 7734 Childsdale Avenue, Rockford, MI 49091. Send protests to: C. R. Flemming, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 225 Federal Building, Lansing, MI 48933. This correction issued to show common carriage in lieu of contract.

MC 114211 (Sub-401TA), filed February 20, 1979. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, Waterloo, IA 50704. Representative: Adelor J. Warren (same as applicant). *(1) irrigation systems, (2) parts for irrigation systems, (3) solar energy systems, fuel burning heating appliances, parts and accessories used in the installation, operation and maintenance of such systems or appliances, (4) pipe, tubing, poles and such materials, equipment and supplies as are used in the installation and maintenance thereof, (5) iron and steel articles, (6) accessories, equipment, materials and supplies used in the manufacture or assembly of the commodities described in (1) through (5) above,* between the facilities of Valmont Industries, Inc. at or near Valley, NE, on the one hand, and, on the other, points in and East of ND, SD, NE, KS, OK, TX, including all international border crossing points for 180 days. An underlying ETA was denied. Supporting shipper(s): Valmont Industries, Inc., Valley, NE 68064. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 115311 (Sub-323TA); filed December 22, 1978, published in the Federal Register of January 26, 1979, and republished as corrected this issue. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: Mark C. Ellison, P.O. Box 872, Atlanta, GA 30301. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Hardboards, insulation boards, plywoods and/or particleboard, parts, materials and accessorial items used for the installation thereof,* from the facilities of Abitibi Corporation in Wilkes County, NC to points in Arkansas, Illinois, Kentucky, Ohio, Indiana, Michigan, Missouri, Maryland, Tennessee, Virginia, West Virginia and the District of Columbia, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): Abitibi Corporation, 3250 West Big Beaver Road, Troy, MI 48084. Send protests to: Sara K. Davis, Transportation Assistant, ICC, 1252 W. Peachtree St., N.W., Room 300, Atlanta, GA 30309. This correction issued to include six (6) destination states inadvertently omitted.

MC 115311 (Sub-340TA), filed February 28, 1979. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: Ralph B. Matthews, 1200 Gas Light Tower, 235 Peachtree St., N.E., Atlanta, GA 30303. (1) Malt beverages and related advertising matter from Milwaukee, WI to Winston-Salem, NC and Memphis, TN and (2) Metal containers and Lids from Winston-Salem, NC to Milwaukee, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Jos. Schlitz Brewing Company, P.O. Box 614, Milwaukee, WI 53201. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 115311 (Sub-341TA), filed February 28, 1979. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, GA 31061. Representative: Kim G. Meyer, P.O. Box 872, Atlanta, GA 30301. *Cement and lime, in tank vehicles* from the facilities

of National Cement Co. at or near Ragland, AL to points in Gwinnett, DeKalb, Fulton, Clayton and Cobb Counties, GA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): National Cement Co., P.O. Box 7348, Mountainbrook Station, Birmingham, AL 35223. Send protests to: Sara K. Davis, T/A, ICG, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 115331 (Sub-487TA), filed February 14, 1979. Applicant: TRUCK TRANSPORT, INCORPORATED, 29 Clayton Hills Lane, St. Louis, MO 63131. Representative: J. R. Ferris, 11040 Manchester Rd., St. Louis, MO 63122. *Zinc,* except in bulk, from the facilities of St. Joe Zinc Company at Josephtown (Potter Township, Beaver County) PA, to St. Louis, MO and its commercial zone, and Herculaneum, MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): St. Joe Zinc Company, Two Oliver Plaza, Pittsburgh, PA 15222. Send protests to: P. E. Binder, OC, ICC, Room 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 115730 (Sub-68TA), filed February 22, 1979. Applicant: THE MICKOW CORP., P.O. Box 1774, Des Moines, IA 50306. Representative: Cecil L. Goettsch, 1100 Des Moines Bldg., Des Moines, IA 50309. Such commodities as are dealt in, or used by, agricultural equipment, industrial equipment, and lawn and leisure product dealers (except commodities in bulk) and iron and steel articles, between the facilities of Deere & Company located in Polk and Wapello Counties, IA, on the one hand, and on the other, points in CO, KS, MO, NE, and points in IL located in the St. Louis, MO commercial zone for 100 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): John Deere Ottumwa Works, Vine and Madison Street, Ottumwa, IA 52501. Send protests to: Herbert W. Allen, DS, ICC, 510 Federal Bldg., Des Moines, IA 50309.

MC 115931 (Sub-82TA), filed February 27, 1979. Applicant: BEE LINE TRANSPORTATION, INC., P.O. Box 3987, Missoula, MT 59801. Representative: William Grimshaw (same address as applicant). Bentonite clay, in bags, from the facilities of American Colloid Company at or near Belle Forche, SD to King County, WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): American Colloid Company, P.O. Box 228, Skokie, IL 60076. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 117730 (Sub-45TA), filed February 26, 1979. Applicant: KOUBENEC MOTOR SERVICE, INC., Route 47, Huntley, IL 60142. Representative: Stephen H. Loeb, 205 West Touhy Avenue, Suite 200, Park Ridge, IL 60068. *(1) Such commodities as are used in the distribution of shampoo,* (except commodities in bulk) from the facilities of Abbott Laboratories at or near North Chicago, IL to Fort Madison, IA and its commercial zone; and *(2) shampoo,* (except in bulk) from the facilities of Abbott Laboratories at Fort Madison, IA to North Chicago, IL and King of Prussia, PA and their commercial zones, for 180 days. Supporting shipper(s): Abbott Laboratories, 1400 Sheridan Road, North Chicago, IL 60064. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 117940 (Sub-314TA), filed February 27, 1979. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, MN 55359. Representative: Allan L. Timmerman, 5300 Highway 12, Maple Plain, MN 55359. *Canned goods* from Picket, WI to points in KS, MO, MN, OH and PA, restricted to traffic originating at named origin and destined to named destinations, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Naas Foods, Inc., P.O. Box 1029, Portland, IN 47371. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 118130 (Sub-106TA), filed February 5, 1979. Applicant: SOUTH EASTERN XPRESS, INC., P.O. Box 6985, Fort Worth, TX 76115. Representative: Billy R. Reid, P.O. Box 8335, Fort Worth, TX 76112. (1) *Rubber articles, and rubber and plastic articles combined, and* (2) *materials, equipment and supplies used in the manufacture and distribution of articles named in (1) above (except commodities in bulk),* between the facilities of Entek Corporation of America at or near Irving, TX, on the one hand, and, on the other, points in the U.S. (except AK and HI), for 180 days. Supporting shipper(s): Entek Corporation of America, P.O. Box 61048, Dallas, TX 75261. Send protests to: Martha A. Powell, Transportation Assistant, Interstate Commerce Commission, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 118130 (Sub-107TA), filed February 27, 1979. Applicant: SOUTH EASTERN XPRESS, INC., P.O. Box 6985, Fort Worth, TX 76115. Representative: Billy R. Reid, P.O. Box 8335, Fort Worth, TX 76112. *Margarine, shortening, salad oil, bacon bits, powdered milk, and butter,* from Fort Worth, TX, to points in OK, NM, and CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Collier Industries, 915 East 9th Street, Fort Worth, TX 76102. Send protests to: Martha A. Powell, Transportation Asst., Interstate Commerce Commission, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 119531 (Sub-168TA), filed February 20, 1979. Applicant: SUN EXPRESS, INC., P.O. Box 1031, Warren, OH 44482. Representative: Andrew Jay Burkholder, Esq., 275 E. State Street, Columbus, OH 43215. *Metal containers,* (1) from La Porte, IN, to Sharonville, OH; Detroit, MI; and St. Louis, MO, and (2) from Obetz, OH, to Detroit, MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): National Can Corporation, 8101 Higgins Road, Chicago, IL 60631. Send protests to: Mary Wehner, D/S, ICC, 731 Federal Office Building, Cleveland, OH 44199.

MC 119631 (Sub-33TA), filed February 28, 1979. Applicant: DEIOMA TRUCKING COMPANY, P.O. Box 3315, Mount Union Station, Alliance, Ohio 44601. Representative: Lawrence E. Lindeman, Suite 1032 Pennsylvania Bldg., 425 13th Street NW., Washington, DC 20004. *Iron and steel, iron and steel articles* from Cleveland, Warren, and Youngstown, OH to points in MI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Republic Steel Corporation, P.O. Box 6778, Cleveland, Ohio 44101. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, 220 Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, Ohio 43215.

MC 119641 (Sub-157TA), filed February 20, 1979. Applicant: RINGLE EXPRESS, INC., 450 East Ninth Street, Fowler, IN 47944. Representative: Alki E. Scopelitis, 1301 Merchants Plaza, Indianapolis, IN 46204. *Tractors (not including tractors with vehicle beds, bed frames or fifth wheels), and attachments and parts therefor,* from the facilities of Deere & Company at Gulfport, MS, to points in IA, IL, CO, KS, MO, NE, MN, OK and WY, for 180 days. Restricted to the transportation of shipments destined to the facilities or dealerships of Deere & Company. Supporting shipper(s): Deere & Company, John Deere Road, Moline, IL 61265. Send protests to: Beverly J. Williams, Transportation Assistant,

ICC, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 119641 (Sub-158TA), filed February 20, 1979. Applicant: RINGLE EXPRESS, INC., 450 East Ninth Street, Fowler, IN 47944. Representative: Alki E. Scopelitis, 1301 Merchants Plaza, Indianapolis, IN 46204. *Iron and steel articles,* from the facilities of Wheeling-Pittsburgh Steel Corporation at Allenport, PA, to IL, IN, MI and WI, for 180 days. Supporting shipper: Wheeling-Pittsburgh Steel Corp., P.O. Box 118, Pittsburgh, PA 15230. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 119741 (Sub-148TA), filed February 16, 1979. Applicant: GREEN FIELD TRANSPORT COMPANY, INC., P.O. Box 1235, Fort Dodge, IA 50501. Representative: D. L. Robson (same as applicant). *Meats, meat products, meat by-products, and articles distributed by meat packinghouses, as described in Sections A and C of Appendix I to the Report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except commodities in bulk, in tank vehicles),* from Ames and Webster City, IA to KS, MN, MO, NE, and WI, restricted to traffic originating at the named origins and destined to the named destinations, for 180 days. Supporting shipper(s): Meat Requirements Coordination, Inc., Park Plaza Bldg., Des Moines, IA 50010. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 121240 (Sub-7TA), filed February 16, 1979. Applicant: DART TRUCKING COMPANY, INC., P.O. Box 158, Canfield, OH 44406. Representative: Michael Spurlock, Esq., 275 East State Street, Columbus, OH 43215. *Sand,* in bulk, in dump vehicles, from Troy Grove, IL, to the facilities of Valley Mould, Division Microdot, Inc., at Hubbard Twp., Trumbull County, OH. Supporting shipper(s): Valley Mould, Division Microdot, Inc., Hubbard, OH 44425. Send protests to: Mary Wehner, D/S, ICC, 731 Federal Office Building, Cleveland, OH 44199.

MC 123061 (Sub-114TA), filed February 26, 1979. Applicant: LEATHAM BROTHERS, INC., 46 Orange Street, P.O. Box 16026, Salt Lake City, UT 84116. Representative: Harry D. Pugsley, 1283 E. South Temple No. 501, Salt Lake City, UT 84102. *Bentonite clay, bagged and in bulk,* from Nyssa, OR to Spokane, WA, Portland, OR, and Boise, ID for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): North Pacific Trading Co., P.O. Box 3915, Portland, OR 97208. Send protests to: L. D. Helfer, DS, ICC, 5309 Federal Bldg., Salt Lake City, UT 84138.

MC 123061 (Sub-115TA), filed February 26, 1979. Applicant: LEATHAM BROTHERS, INC., 46 Orange Street, P.O. Box 16026, Salt Lake City, UT 84116. Representative: Harry D. Pugsley, 1283 E. South Temple No. 501, Salt Lake City, UT 84102. *Dolomite lime,* bagged and bulk, from Salinas and Natividad, CA to Woodburn, Gresham, Salem, and Hillsboro, OR for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): North Pacific Trading Co., P.O. Box 3915, Portland, OR 97208. Send protests to: L. D. Helfer, DS, ICC, 5309 Federal Bldg., Salt Lake City, UT 84138.

MC 123091 (Sub-30TA), filed January 31, 1979. Applicant: NICK STRIMBU, INC., 3500 Parkway Road, Brookfield, OH 44403. Representative: James Duvall, Esq., 220 West Bridge Street, Dublin, OH 43017. *Iron and Steel, Electrical Conduit, Pipe and accessories,* from Brookfield, OH to points in CT, ME, MD, MA, NH, NJ, NY, PA, RI and VT for 180 days. Supporting shipper(s): Republic Steel Corporation, 224 East 131st Street, Cleveland, OH 44108. Send protests to: Mrs. Mary A. Wehner, District Supervisor, Interstate Commerce Commission, 1240 E. Ninth Street, Cleveland, OH 44199.

MC 127651 (Sub-42TA), filed February 26, 1979. Applicant: EVERETT G. ROEHL, INC., E. 28th St., P.O. Box 7, Marshfield, WI 54449. Representative: Richard Westley, 4506 Regent St., Suite 100, Madison, WI 53705. *Malt beverages,* from St. Louis, MO to Marshfield, WI and points in its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Bilek Distributing Co., Inc., P.O. Box 98, Marshfield, WI 54449. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 127840 (Sub-91TA), filed February 16, 1979. Applicant: MONTGOMERY TANK LINES, INC., 17550 Fritz Drive, Lansing, IL 60438. Representative: William H. Towle, 180 North LaSalle Street, Chicago, IL 60601. *Tallow,* in bulk, in tank vehicles from the facilities of Iowa Beef Processors, Inc. in Amarillo, TX and Emporia, KS to AR, CO, IL, IA, LA, MO, NE, OK, TN and TX, for 180 days. Supporting shipper(s): Iowa Beef Processors, Inc., Dakota City, NE 68731. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 128270 (Sub-34TA), filed February 23, 1979. Applicant: REDIEHS INTERSTATE, INC., 1477 Ripley Street, East Gary, IN 46405. Representative: Richard A. Kerwin, 180 North LaSalle Street, Chicago, IL 60601. *Iron and steel articles, and materials, equipment and supplies used in the manufacturing of iron and steel articles* from Granite City, IL to AR, CO, IA, ID, IN, KS, LA, MT, MN, MO, NE, ND, OK, SD, TX, UT, WI and WY, for 180 days. Supporting shipper(s): Granite City Steel, Division of National Steel Corporation, Granite City, IL 62040. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 128750 (Sub-8TA), filed February 20, 1979. Applicant: RAMPLEY TRANSPORT, INC., P.O. Box 172, Augusta, IL 62311. Representative: Ronald N. Cobert, Esquire, Suite 501, 1730 M Street, N.W., Washington, D.C. 20036. *Andydrous Ammonia,* in bulk, from Niota and East Dubuque, IL, to points in NE, IA, MO, IN, WI and MN, for 180 days. Supporting shipper(s): N-Ren Corp., P.O. Drawer D, East Dubuque, IL 61025. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, Illinois 62701.

MC 129410 (Sub-12TA), filed February 15, 1979. Applicant: ROBERT BONCOSKY, INC., 4811 Tile Line Road, Crystal Lake, IL 60014. Representative: Carl L. Steiner, 39 South LaSalle Street, Chicago, IL 60603. Contract-irregular, *Liquid Corn Syrup,* in bulk from the facilities of American Maize Products Co. at Hammond, IN to IL, KY, LA, MD, MI, MO, NY, OH, PA and TN, for 180 days. Supporting shipper(s): American Maize Products Company, 113th and Indianapolis Boulevard, Hammond, IN 46326. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 133061 (Sub-3TA), filed February 28, 1979. Applicant: PUBLIC TRANSPORT CORPORATION, P.O. Box 327, Troutman, NC 28116. Representative: R. Mayne Albright, 200 Anderson Plaza, 100 E. Six Forks Rd., Raleigh, NC 27609. *Nitrogen fertilizer solutions, liquid, in tank trucks,* from Elmwood Storage Terminal, Statesville,

NC to points and places in VA on and West of US Hwy. 220, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): W. R. Grace & Co., Agricultural Chemicals Group, P.O. Box 368, Wilmington, NC 28402. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Rd-Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 140241 (Sub-45TA), filed February 28, 1979. Applicant: DALKE TRANSPORT, INC., Box 7 Moundridge, KS 67107. Representative: William B. Barker, 641 Harrison, Topeka, KS 66603. *Fire retardant, in bags, bentonite and soapstone (except in bulk)* from Gonzales, TX to points in AL, FL, GA, KY, LA, MS & TN; for 180 days, common, irregular; Supporting shipper: Southern Clay Products, Inc., Gonzales, TX 78629; Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202. Supporting Shipper(s): Southern Clay Products, Inc., P.O.Box 44, Gonzales, TX 78629. Send protests to: M. E. Taylor, Dist. Supv., Interstate Commerce Commission, 101 Litwin Bldg., Wichita, KS 67202.

MC 140820 (Sub-13TA), filed February 22, 1979. Applicant: A & R TRANSPORT INC., 2996 N. Illinois, Ottawa, IL 61350. Representative: James R. Madler, 120 West Madison Street, Chicago, IL 60602. *Dry plastics, in bulk* and *liquid chemicals,* in bulk, from the facilities of Northern Petrochemical Co., at or near Lemont and Morris, IL to points in IN, OH, PA, KY, NY, NJ, MI, CT, MA, RI, WI, MN, MO, IA, TN, WV, NC, SC, GA, and KS. Supporting shipper(s): Northern Petrochemical Company, 2350 E. Devon Avenue, Des Plaines, IL 60018. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 141641 (Sub-10TA), filed February 21, 1979. Applicant: WILSON CERTIFIED EXPRESS, INC., P.O. Box 3326, Des Moines, IA 50316. Representative: Donald L. Stern, 7171 Mercy Road, Suite 610, Omaha, NE 68106. *Citrus products and other juice and beverages* from the facilities of Tropicana Products, Inc. at or near Bradenton, FL, to points in AR, IL, IN, IA, KS, MN, MO, NE, ND, OK, TN, TX, SD, and WI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Tropicana Product Sales, Inc., P.O. Box 338, Bradenton, FL 33506. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 142311 (Sub-1TA), filed February 28, 1979. Applicant: MR. STEAK TRANSPORTATION COMPANY, INC., 5100 Race Court, Denver, CO 80216. Representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman St., Denver CO 80203. *Contract* carrier: *irregular* routes: *Foodstuffs and restaurant materials and supplies* between the facilities of Mr. Steak, Inc. at or near Denver, CO on the one hand, and on the other, facilities of Quality Steaks of Snyder, Inc. at or near Snyder, NE for 180 days. Underlying ETA seeks 90 days authority. Supporting shipper: Mr. Steak, Inc., 5100 Race Court, Denver, CO 80216. Send protests to: D/S Roger L. Buchanan, ICC, 492 U.S. Customs House, 721 19th St., Denver, CO 80202. Supporting shipper(s): Mr. Steak, Inc., 5100 Race Court, Denver, CO 80216. Send protests to: D/S Roger L. Buchanan, Interstate Commerce Commission, 721 19th St., 492 U.S. Customs House, Denver, CO 80202.

MC 142980 (Sub-4TA), filed February 28, 1979. Applicant: PROCESSING TRANSPORTATION, INC., P.O. Box 68, Conley, GA 30027. Representative: Mark C. Ellison, 1200 Gas Light Tower, 235 Peachtree St., N.E., Atlanta, Ga 30303. *Plastic film or sheeting* from the facilities of Alchem Plastics Co., Inc. in Atlanta, GA to points in AL, FL, GA, KY, LA, NC, SC, TN, VA, WV and Cincinnati, OH and its commercial zone, for 180 days An underlying ETA seeks 90 days authority. Supporting shipper(s): Alchem Plastics Co., Inc., P.O. Box 43248, 20 Enterprise Blvd., SW, Atlanta, GA 30336. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm 300, Atlanta, GA 30309.

MC 143510 (Sub-3TA), filed February 28, 1979. Applicant: AARON SMITH TRUCKING COMPANY, INC., P.O. Box 153, Dudley, NC 28333. Representative: John N. Fountain, Attorney, P.O. Box 2246, Raleigh, NC 27602. Prefabricated wood and metal utility buildings, set up and knocked down or in sections, together with accessories from Lake City, SC and Goldsboro, NC to points in NC, VA, SC, GA, and FL for 180 days. An underlying ETA seeking 90 days authority has been filed. Supporting shipper(s): Gas-Fired Products, Inc., P.O. Box 3485, Charlotte, NC 28203. Send protests to: Mr. Archie W. Andrews, District Supervisor, Interstate Commerce Commission, P.O. Box 26896, Raleigh, NC 27611.

MC 143511 (Sub-4TA), filed February 28, 1979. Applicant: HARDINGER TRANSFER CO., INC., P.O. Box 521, 1314 West 18th Street, Erie, PA 16512. Representative: Samuel J. Varo (same as applicant). *Locomotive parts, generators, engines, and electric motors* from the facilities of General Electric Co., Erie, PA to points in and east of TX, OK, KS, NE, SD, and ND; and *equipment, materials and supplies (except commodities in bulk, in tank vehicles) used in the manufacture of the foregoing commodities in the reverse direction* for 180 days. No ETA filed. Supporting shipper(s): General Electric Company, 290k E. Lake Road, Erie, PA 16531. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

MC 144051 (Sub-6TA), filed January 8, 1979. Applicant: ALFORD-LOGSTON INC., 1714 Tabor, Houston, TX 77009. Representative: Dale Alford, 1714 Tabor, Houston, TX 77099. Contract Carrier over Irregular Routes. *Home care products* from Memphis, TN to all points in State of MS for 180 days. An underlying ETA seeks 90 days authority. The purpose of this republication is to correct this application published in Federal Register dated February 23, 1979, Vol. 44, No. 38 from regular routes to irregular routes. Supporting shipper(s): Stanley Home Products, Inc., 112-116 Pleasant St., Easthampton, MA 01027. Send protests to: John F. Mensing, Interstate Commerce Commission, 8610 Federal Bldg., 515 Rusk Ave., Houston, TX 77002.

MC 144140 (Sub-25TA), filed February 28, 1979. Applicant: SOUTHERN FREIGHTWAYS, INC., Highway 44 West, P.O. Box 274, Eustis, FL 32726. Representative: John L. Dickerson (same as applicant). *Citrus Products* from the storage facilities of Citrus Central, Inc., located in the state of Florida to points in the states of AZ, CA, CO, ID, MT, NM, NV, OR, VT, WA, and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Citrus Central, Inc., P.O. Box 17774, Orlando, FL 32860. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 145491 (Sub-1TA), filed February 16, 1979. Applicant: PIGGYBACK TRANSPORTATION, INC., 254 S. Kitley Avenue, Indianapolis, IN 46219. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. *General commodities (except articles of unusual value, Classes A and B explosives, household goods, as defined by the Commission, commodities in bulk, and those requiring special equipment),* between the rail ramp located at Danville, IL on the one hand and on the other Bloomington, Indianapolis, and Terre Haute, IN, for

180 days. Restricted to traffic having an immediately prior or subsequent movement by rail. Supporting shippers: BDP Corp., 7310 W. Morris Street, Indianapolis, IN 46231, General Housewares Corp., P.O. Box 4066, Terre Haute, IN 47804, Otis Elevator Co., 1331 Curry Pike, Bloomington, IN, 47401, National Piggyback Services, Inc., P.O. Box 27176, Indianapolis, IN 46227. Send protests to: Beverly J. Williams, Transportation Assistant, ICC, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

MC 145870 (Sub-4TA), filed January 26, 1979. Applicant: L-J-R HAULING, INCORPORATED, P.O. Box 699, Dublin, VA 24084. Representative: Wilmer B. Hill, Attorney-At-Law, Suite 805, 666 Eleventh Street, NW., Washington, DC 20001. *(1) Mining machinery and equipment, (2) Parts for the commodities named in (1)* between the facilities of J & W, Inc., at or near Princeton, WV, on the one hand, and, on the other, points in AL, IL, IN, KY, OH, PA, TN, VA, and WV for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): J & W Inc., P.O. Box 1125, Princeton, WV 24740. Send protests to: Paul D. Collins, DS, ICC, Room 10-502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 145951 (Sub-1TA), filed January 19, 1979. Applicant: SUBURBAN TOWING, INC., 2201 Howard Blvd., Mt. Penn, Reading, PA 19606. Representative: Oscar O. Fick, Jr., (same as applicant). *Replacement vehicle and disabled or wrecked vehicle in towaway service,* between Reading, PA, on the one hand, and, on the other, points in NY, NJ, CT, DE, VA, WV, MA, ME, MD, OH, DC, VT, NH, for 180 days. Supporting shipper(s): Penske Leasing, Inc., 255 Penske Plaza, Reading, PA 19603. Send protests to: T. M. Esposito, Trans. Asst., 600 Arch St., Room 3238, Phila., PA 19106.

MC 146451TA, filed February 26, 1979. Applicant: WHATLEY-WHITE, INC., 230 Ross Clark Circle, NE, Dothan, AL 36302. Representative: W. K. Martin, 57 Adams Avenue, Montgomery, AL 36104. (1) *Nonferrous metals,* from the facilities of American Brass, Inc., at Headland, AL, to points in the U.S., except those in AL (other than Mobile, AL), AK, and HI; and (2) *Materials, equipment and supplies* used in smelting and refining of nonferrous metals, from points in the United States, except AL (other than Mobile, AL), AK and HI, to the facilities of American Brass, Inc., at Headland, AL, restricted (1) against the transportation of commodities in bulk when moving in dump, tank, or hopper type vehicles, and commodities which because of size or weight require the use of special equipment and (2) to the transportation of shipments originating at, or destined to, the described facilities at Headland, AL, for 180 days. Supporting shipper(s): American Brass, Inc., P.O. Box 185, Headland, AL 36345. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operation, ICC, Room 1616-2121 Building, Birmingham, AL 35203.

MC 146621 (Sub-1TA), filed March 12, 1979. Applicant: EUGENE GEORGE TRUCKING SERVICE, Route 1, Box 14A, Oswego, KS 67356. Representative: Tom B. Kretsinger, Kretsinger & Kretsinger, 20 East Franklin, Liberty, MO 64068. *Steel buildings, and machinery, equipment, materials and supplies used in the manufacture, construction, erection and installation of steel buildings,* between Chetopa, KS on the one hand, and on the other hand points in AR, CO, IA, IL, IN, KS, KY, LA, MO, MS, NE, OK, SD, TN, TX & WI; and between Waukesha, WI on the one hand, and on the other hand points in AR, CO, IA, IL, IN, KS, KY, LA, MO, MS, NE, OK, SD, TN & TX, for 180 days, common, irregular, Supporting shipper: Sonoco Buildings, Chetopa, KS; Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS. 67202. Supporting shipper(s): Sonoco Buildings, P.O. Box 307, Chetopa, KS 67336. Send protests to: M. E. Taylor, Dist. Supv., Interstate Commerce Commission, 101 Litwin Bldg., Wichita, KS 67202.

Passenger

MC 146450TA, filed February 26, 1979. Applicant: UNITED CHARTER SERVICE, INC., 375 So. Mayfair Ave., Suite 208, Daly City, CA 94015. Representative: *Passengers and their baggage,* in the same vehicle with passengers, in charter operations, beginning and ending in San Francisco, CA, and extending to Reno, NV for 180 days. Restricted to vehicles having a seating capacity of no more than 15 passengers and further restricted to Japanese nationals only. Supporting shippers(s): Japan Travel Bureau International, Inc., 360 Post St., San Francisco, CA 94108; Nippon Express U.S.A. Inc., 39 Geary St., San Francisco, CA 94108; Trans Pacific Travel, Inc., 126 Post St., San Francisco, CA. Send protests to: District Supervisor M. M. Butler, 211 Main, Suite 500, San Francisco, CA 94105. Supporting shipper(s): Japan Travel Bureau International, Inc., 360 Post St., San Francisco, CA 94108. Nippon Express U.S.A., Inc., 39 Geary St., San Francisco, CA 94108. Trans Pacific Travel, Inc., 126 Post St., San Francisco, CA 94108. Send protests to: District Supervisor M. M. Butler, 211 Main, Suite 500, San Francisco, CA 94105.

By the Commission.

H. G. Homme, Jr.,
Secretary.

[Notice No. 62]
[FR Doc. 79-12200 Filed 4-20-79; 8:45 am]
BILLING CODE 7035-01-M

Vacating of General Temporary Order

Decided: April 16, 1979.

In accordance with the announced agreement reached between the trucking industry and the Teamsters Union and the end of the work stoppage affecting many of the nation's motor carriers;

It is ordered:

General Temporary Order No. 17 entered on April 1, 1979, is vacated and set aside.

It is further ordered:

That any temporary authority granted pursuant to General Temporary Authority No. 17 shall expire as of 12:01 a.m., April 25, 1979. Transportation which began prior to that time shall continue to destination pursuant to bill of lading instructions.

This is not a major Federal Action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian. Vice Chairman Brown and Commissioner Stafford voted to discontinue the proceeding effective April 18, 1979. Commissioner Christian was absent and did not participate in the disposition of this proceeding.

H. G. Homme, Jr.,
Secretary.

[Ex Parte No. MC-64; General Temp. Order No. 17]
[FR Doc 79-12530 Filed 4-20-79; 8:45 am]
BILLING CODE 7035-01-M

Rerouting of Traffic

To: All Railroads.

In the opinion of Joel E. Burns, Agent, The Atchison, Topeka and Santa Fe Railway Company is unable to transport promptly all traffic offered for movement to, from, or via Pittsburg, Kansas, because of bridge damage.

It is ordered,

(a) *Rerouting traffic.* The Atchison, Topeka and Santa Fe Railway Company being unable to transport promptly all traffic offered for movement to, from, or via Pittsburg, Kansas, because of bridge damage, that line and its connections are authorized to divert or reroute such traffic via any available route to

expedite the movement. Traffic necessarily diverted by authority of this order shall be rerouted so as to preserve as nearly as possible the participation and revenues of other carriers provided in the original routing. The billing covering all such cars rerouted shall carry a reference to the order as authority for the rerouting.

(b) *Acceptance of traffic in interchange at Pittsburg.* In the event the Atchison, Topeka and Santa Fe Railway Company cannot accept traffic in interchange from a connecting carrier at Pittsburg, the delivering carrier, after establishing such condition, may reroute or divert the traffic via any available route.

(c) *Concurrence of receiving roads to be obtained.* The railroad rerouting cars in accordance with this order shall receive the concurrence of other railroads to which such traffic is to be diverted or rerouted, before the rerouting or diversion is ordered.

(d) *Notification to shippers.* Each carrier rerouting cars in accordance with this order, shall notify each shipper at the time each shipment is rerouted or diverted and shall furnish to such shipper the new routing provided for under this order.

(e) Inasmuch as the diversion or rerouting of traffic is deemed to be due to carrier disability, the rates applicable to traffic diverted or rerouted by said Agent shall be the rates which were applicable at the time of shipment on the shipments as originally routed.

(f) In executing the directions of the Commission and of such Agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(g) *Effective date.* This order shall become effective 3:00 p.m., April 2, 1979.

Expiration date. This order shall expire at 11:59 p.m., April 22, 1979, unless otherwise modified, changed or suspended.

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of this order shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., April 2, 1979.

Interstate Commerce Commission.

Joel E. Burns,

Agent.

[FR Doc. 79-12529 Filed 4-20-79; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 79
Monday, April 23, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL ELECTION COMMISSION.

DATE AND TIME: 10 a.m., Wednesday, April 25, 1979.

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Compliance; litigation; personnel; labor/management relations; and audits continued from the meetings of April 11 and 19, 1979.

* * * * *

DATE AND TIME: 10 a.m., Thursday, April 26, 1979.

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: Portions of this meeting will be open to the public and portions will be closed.

MATTERS TO BE CONSIDERED:

Portions Open to the Public

Setting of dates for future meetings.

Correction and approval of minutes.

AO 1979-2. Continued from April 19, 1979.

AO 1979-10. Continued from April 19, 1979.

AO 1978-102. Willard A. Esselstyn, Secretary Treasurer, Coal Miners Political Action Committee.

Discussion of the Sunshine Act.

Appropriations and budget.

Pending legislation—Progress report on S. 623.

1980 Elections and related matters—Regulations for Presidential debates.

Classification actions.

Routine administrative matters.

Portions Closed to the Public (following open session)

All matters not concluded at the executive session of Wednesday, April 25, 1979.

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Chief Press Officer, 202-523-4065.

Marjorie W. Emmons,
Secretary to the Commission.
[S-771-79 Filed 4-19-79; 3:16 pm]
BILLING CODE 6715-01-M

2

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 10 a.m., April 25, 1979.

PLACE: 825 North Capitol Street, N.E., Washington, D.C. 20426, hearing room A.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION:

Lois D. Cashell, Acting Secretary, (202) 275-4166.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda, however, all public documents may be examined in the Office of Public Information.

Power Agenda—289th Meeting, April 25, 1979, Regular Meeting (10 a.m.)

CAP-1. Docket No. ER79-126, Arizona Public Service Co.
CAP-2. Docket No. ER79-105, Alcoa Generating Corp.
CAP-3. Docket No. ER79-139, Appalachian Power Co.
CAP-4. Docket No. ER79-239, Ohio Power Co. and Duquesne Light Co.
CAP-5. Docket No. ER79-229, Ohio Power Co.
CAP-6. Docket No. ER79-234, Public Service Co. of Indiana.
CAP-7. Docket No. ER79-231, Kansas City Power & Light Co.
CAP-8. Docket No. ER78-484, Monongahela Power Co.
CAP-9. Docket No. ER78-467, Iowa Power & Light Co.
CAP-10. Docket No. ER76-543, Southwestern Public Service Co.
CAP-11. Docket No. ER78-522, Virginia Electric & Power Co.

Miscellaneous Agenda—289th Meeting, April 25, 1979, Regular Meeting

CAM-1. Docket No. RM79- , Final Rules Under Part 275 of the Commission's Regulations under the NGPA.
CAM-2. Docket No. RA79-15, Little America Refining Co.
CAM-3. Docket No. RO79-2, Marine Fuel Supply & Towing, Inc.
CAM-4. ERA's Proposed Amendments to entitlements program to reduce the level of benefits received under the small refiner bias.
CAM-5. Texas Gas Pipeline Corp.
CAM-6. Northeast Nuclear Energy Co.
CAM-7. Virginia Electric & Power Co.

Gas Agenda—289th Meeting, April 25, 1979, Regular Meeting

CAG-1. Docket No. RP79-58, Locust Ridge Gas Co.
CAG-2. Docket No. RP79-55, Western Transmission Corp.
CAG-3. Docket No. RP74-97 (PGA No. 79-2), Montana Dakota Utilities Co.
CAG-4. Docket No. CP77-337, Algonquin Gas Transmission Co.
CAG-5. Docket No. RP73-14 (PGA No. 78-2) (DCA No. 78-1), Michigan Wisconsin Pipe Line Co.
CAG-6. Docket Nos. RP77-58, RP77-54, RP74-61 (PGA 77-5), RP76-10 (PGA 77-5), RP74-61 (PGA 78-3) and RP76-10 (PGA 78-3), Arkansas Lousiana Gas Co.
CAG-7. Docket No. RP77-31, Southern Natural Gas Co.
CAG-8. Docket Nos. RP72-150, et al., El Paso Natural Gas Co.
CAG-9. Docket Nos. IS79-8 and OR78-1, Mobil Alaska Pipeline Co.
CAG-10 Docket No. CI79-238, Southland Royalty Co.; Docket No. CI78-588, Cities Service Co.; Docket No. CI79-99, Continental Oil Co.; Docket No. CI79-241, Gulf Oil Corp.; Docket No. CI78-697, HNG Oil Co.; Docket No. CI79-240, Kerr-McGee Corp.; Docket No. CI79-202, Mobil Oil Corp.; and Docket No. CI79-257, Texaco, Inc.
CAG-11. Docket No. CI78-628, et al., Louisiana land Offshore Exploration Co., Inc., et al.
CAG-12. Docket Nos. CI69-266, et al., Shell Oil Co. (operator), et al.
CAG-13. Amoco Production Co., et al.
CAG-14. Docket Nos. CI76-629, et al., Continental Oil Co., et al.
CAG-15. Docket Nos. CI78-1131 and CI78-1215, Amoco Production Co., et al.
CAG-16. Docket Nos. CI76-516, et al., Shell Oil Co., et al.
CAG-17. Docket No. CI77-508, the Offshore Co. and Docket No. CI77-509, Sonat Exploration Co.
CAG-18. Docket No. CI78-917, W. C. McBride, Silurian Oil Co.
CAG-19. Docket No. CP78-24, Mountain Fuel Supply Co.
CAG-20. Docket No. CP79-116, Columbia Gas Transmission Corp. and Columbia Gulf Transmission Co.
CAG-21. Docket No. CP79-174, Columbia Gulf Transmission Co.
CAG-22. Docket No. CP78-537, Florida Gas Transmission Co. and United Gas Pipe Line Co.

CAG–23. Docket No. CP69–78, Carnegie Natural Gas Co. and Consolidated Gas Supply Corp.
CAG–24. Docket No. CP76–311, Tennessee Gas Pipeline Co., a division of Tenneco Inc.
CAG–25. Docket No. CP79–24, Transcontinental Gas Pipe Line Corp.
CAG–26. Docket No. CP79–123, Transcontinental Gas Pipe Line Corp.
CAG–27. Docket No. CP79–91, Northern Natural Gas Co.
CAG–28. Docket No. CP79–125, Northern Natural Gas Co.
CAG–29. Docket No. CP78–116, El Paso Natural Gas Co. and Docket No. CP78–130, Northwest Pipeline Corp.

Power Agenda—289th Meeting, April 25, 1979, Regular Meeting

I. License project matters

P–1. Project No. 2714, Western Massachusetts Electric Co.
P–2. Project No. 2833, Public Utility District No. 1 of Lewis County, Wash.
P–3. Docket No. EL78–43, City of Bountiful, Utah, Utah Power & Light Co., City of Santa Clara, Calif. and Pacific Gas & Electric Co.
P–4. Docket No. E–9601, Lake Oswego Corp.
P–5. Project No. 176, Escondido Mutual Water Co.; City of Escondido, Calif.; and Vista Irrigation District. Docket No. E–7362, Secretary of the Interior, acting in his capacity as trustee for the Rincon, La Jolla and San Pasqual Bands of Mission Indians V. Escondido Mutual Water Co. and City of Escondido, Calif. Docket No. E–7655 Vista Irrigation District project No. 559, San Diego Gas & Electric Co.

Miscellaneous Agenda—289th Meeting, April 25, 1979, Regular Meeting

M–1. Docket No. RM79– , Final rules for part 271G of Commission's Regulations under NGPA.
M–2. Docket No. RM79–20, Certain sales of natural gas by Intrastate Pipelines.
M–3. Docket No. RM78–23, State of Louisiana first use tax in pipeline rate cases.

Gas Agenda—289th Meeting, April 25, 1979, Regular Meeting

I. Pipeline rate matters

RP–1. Docket No. RP79–59, Colorado Interstate Gas Co.
RP–2. Docket No. RP73–35 (PGA79–2), Trunkline Gas Co.
RP–3. Docket No. RP73–36 (PGA79–2), Panhandle Eastern Pipeline Co.
RP–4. Docket No. RP76–64 (PGA79–1), Mountain Fuel Supply Co.
RP–5. Docket No. RP73–94 (PGA79–2), Valley Gas Transmission, Inc.
RP–6. Docket Nos. RP73–97 and RP76–93 (PGA79–1), Kentucky West Virginia Gas Co.
RP–7. Docket No. RP79–57, Northwest Pipeline Corp.
RP–8. Docket No. OR78–1, Trans Alaska Pipeline System.

II. Producer certificate matters

CI–1. Docket No. RI78–16, West Lake Natural Gasoline Co.

III. Pipeline certificate matters

CP–1. Docket No. CP77–267, Mid Louisiana Gas Co. and Transcontinental Gas Pipe Line Corp.
CP–2. Docket Nos. CP78–500, et al., El Paso Natural Gas Co., et al.
CP–3. Docket No. CP77–71, et al., Natural Gas Pipeline Co. of America, et al.
CP–4. Docket Nos. CP68–110, et al., CP70–19, et al., CP70–100 and CP71–222, et al., Great Lakes Gas Transmission Co. Docket No. CP74–187, Montana Power Co. Docket Nos. G–18314, CP66–121 and CP70–25, Mid-Western Gas Transmission. Docket Nos. CP75–341 and CP75–342, Northwest Pipeline Corp., Docket No. RP79–60, Great Lakes Gas Transmission Co., Docket No. RP79–19, Pacific Gas Transmission Co.

Lois D. Cashell,
Acting Secretary.
[S–769–79 Filed 4–19–79; 11:52 am]
BILLING CODE 6740–02–M

3

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 2:30 p.m., April 26, 1979.

PLACE: 1700 G Street, N.W., sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Franklin O. Bolling (202–377–6677).

MATTERS TO BE CONSIDERED:

Branch Office Application—First Federal Savings and Loan Association of Lake Worth, Lake Worth, Florida.

Satellite Office Application—First Federal Savings and Loan Association of Martin County, Stuart, Florida.

Branch Office Application—Family Federal Savings and Loan Association, Saginaw, Michigan.

Continuance of Mobile Facility (Extension of Expiration Date)—Franklin Federal Savings and Loan Association, Columbus, Ohio.

EFTS-RSU Application—Standard Federal Savings and Loan Association of Cincinnati, Cincinnati, Ohio.

Request for Stay of the Bank Board's Approval of a Branch Office Application for Westchester Federal Savings and Loan Association, New Rochelle, New York by the Village of Bronxville, New York.

Application for Permission to Convert to a Florida-Chartered Stock Association—First Florida Savings and Loan Association, Gainesville, Florida.

Application for Permission to Convert from a State Mutual to a State Stock form of Organization—Chaves County Savings and Loan Association, Roswell, New Mexico.

No. 229, April 19, 1979.

[S–773–79 Filed 4–19–79; 3:54 pm]
BILLING CODE 6720–01–M

4

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 44, No. 75, page 22912, April 17, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: At the conclusion of the open meeting to be held at 9:30 a.m., April 19, 1979.

PLACE: 1700 G Street, NW., sixth floor, Washington, D.C.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION: Franklin O. Bolling (202–377–6677).

CHANGES IN THE MEETING: The following items have been added to the agenda for this closed meeting:

Election of Bank President—Federal Home Loan Bank of Little Rock.
Election of Bank President—Federal Home Loan Bank of Seattle.
No. 228, April 19, 1979

[S–770–79 Filed 4–19–79; 1:27 pm]
BILLING CODE 6720–01–M

5

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 10 a.m., April 23, 1979.

PLACE: Room 600, 1730 K Street, N.W., Washington, D.C.

STATUS: This meeting may be closed.

MATTERS TO BE CONSIDERED:

The Commission will consider and act upon the following agenda items:
Secretary of Labor v. Clinchfield Coal Co., NORT 78–417–P. (Petition for Discretionary Review)
Secretary of Labor v. Helvetia Coal Co. and Keystone Coal Co., PITT 79–12–P, PITT 79–5–P. (Petition for Discretionary Review)
Secretary of Labor v. CF&I Steel Corp., DENV 77–79–P. (Petition for Discretionary Review)
Procedural Rules implementing Executive Order 11222.
It was determined by unanimous vote of the Commissioners that Commission business required that these matters be immediately scheduled for a Commission meeting and that no earlier announcement of this action was possible.

CONTACT PERSON FOR MORE INFORMATION:

Joanne Kelley, 202–653–5632.
[S–772–79 Filed 4–19–79; 3:42 pm]
BILLING CODE 6820–12–M

6

INTERSTATE COMMERCE COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, April 19, 1979.

PLACE: Hearing Room C, Interstate Commerce Commission Building, 12th Street and Constitution Avenue, N.W., Washington, D.C.

STATUS: Short Notice of Open Special Conference.

MATTER TO BE CONSIDERED: Potential Energy Emergency—Issues and Options

(continuation of April 17, 1979, Open Special Conference).

CONTACT PERSON FOR MORE INFORMATION:

Douglas Baldwin, Director, Office of Communications, telephone: 202–275–7252.

The Commission's professional staff will be available to brief news media representatives on conference issues at the conclusion of the meeting.

[S–767–79 Filed 4–19–79: 9:24 am]

BILLING CODE 7035–01–M

7

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Wednesday, April 25, 1979

PLACE: Chairman's Conference Room, 1717 H Street, NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Wednesday, April 25

9:30 a.m.—(1) Discussion of Legislative Matters (including Regulatory Reform and Siting and Licensing) (approximately 2 hours) (public meeeting).

1:30 p.m.—(1) Interim Briefing by Study Group on Construction During Review (postponed from April 18) (approximately 1 hour) (public meeting) and (2) Discussion of Personnel Matter (approximately 1½ hours) (closed—exemption 6).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee (202) 634–1410.

Walter Magee,

Office of the Secretary.

[S–768–79 Filed 4–19–79; 10:17 am]

BILLING CODE 7590–01–M

Federal Register

Monday
April 23, 1979

Part II

Department of the Interior

Bureau of Indian Affairs

Indian Child Welfare; Proposed Administration and Funding Provisions; Procedures for Tribal Reassumption of Jurisdiction Over Child Custody Proceedings and Recommended Guidelines for State Courts—Indian Child Custody Proceedings

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 13]

Tribal Reassumption of Jurisdiction Over Child Custody Proceedings

April 17, 1978.

AGENCY: Bureau of Indian Affiars, Department of the Interior.

ACTION: Proposed Rulemaking.

SUMMARY: The Bureau of Indian Affairs proposes to add a new part to its regulations to establish procedures by which an Indian tribe may reassume jurisdiction over Indian child custody proceedings as authorized by the Indian Child welfare Act, Pub. L. 95–608, 92 Stat. 3069, 25 U.S.C. s1918. It is intended that when published as final rulemaking these procedures will complement those related procedures to be published in 25 CFR Part 23, Indian Child Welfare Act, and also will complement recommended guidelines for State courts relative to Indian child custody proceedings to be published as a Federal Register Notice.

DATE: Comments must be received on or before May 23, 1979.

ADDRESS: Written comments should be addressed to David Etheridge, Officer of the Solicitor, Division of Indian Affairs, Department of the Interior, 18th and C Streets, NW., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT: David Etheridge, Office of the Solicitor, Division of Indian Affairs, Department of the Interior, telephone (202) 343–6967.

SUPPLEMENTARY INFORMATION: These proposed regulations incorporate viewpoints expressed during public hearings conducted during March, 1979. Additional and supplemental viewpoints are now solicited prior to publication of the regulations in final form.

The authority for issuing these regulations is contained in 5 U.S.C. 301 and sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 209 DM 8.

The primary author of this document is David Etheridge, Office of the Solicitor, Division of Indian Affairs, Department of the Interior.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

It is proposed to add Part 13 to Subchapter B, Chapter I of Title 25 of the Code of Federal Regulations to read as follows:

PART 13—TRIBAL REASSUMPTION OF JURISDICTION OVER CHILD CUSTODY PROCEEDINGS

Subpart A—Purpose

Sec.
13.1 Purpose.

Subpart B—Reassumption

13.11 Contents of reassumption petition.
13.12 Criteria for approval of reassumption petitions.
13.13 Technical assistance prior to petitioning.
13.14 Secretarial review procedure.
13.15 Finality of decision by the Secretary.
13.16 Technical assistance after disapproval.

Authority: 5 U.S.C. 301, secs. 463, 465, of the revised statutes (25 U.S.C. 2 and 9) and 209 DM 8.

Subpart A—Purpose

§ 13.1 Purpose.

(a) The regulations of this part establish the procedures by which an Indian tribe that occupies territory that has become subject to concurrent or exclusive state jurisdiction pursuant to the provisions of the Act of August 15, 1953 (67 Stat. 588), or pursuant to any other federal statute, may reassume jurisdiction over Indian child custody proceedings as authorized by the Indian Child Welfare Act, Pub. L. 95–608, 92 Stat 3069 25 U.S.C. 1918.

(b) On some reservations there are disputes concerning whether certain federal acts have subjected Indian child custody proceedings to state jurisdiction. Tribes located on those reservations may wish to exercise such jurisdiction without the necessity of engaging in protracted litigation. The procedures in this part also permit such tribes to secure unquestioned jurisdiction over Indian child custody matters without relinquishing their claim that no federal statute had ever deprived them of that jurisdiction.

Subpart B—Reassumption

§ 13.11 Contents of reassumption petition.

A petition to reassume jurisdiction over Indian child custody proceedings and the accompanying plan shall contain, where available, the following information in sufficient detail to permit the Secretary to determine whether reassumption is feasible:

(a) Full name, address and telephone number of the petitioning tribe or tribes.

(b) A resolution by the tribal governing body supporting the petition and plan. If the territory involved is occupied by more than one tribe, the governing body of each tribe involved must adopt such a resolution.

(c) The proposed date on which jurisdiction would be reassumed.

(d) Citation of the statute or statutes that has provided the basis for state assertion of jurisdiction over Indian child custody proceedings arising in the area covered by the petition.

(e) Legal description of the territory over which jurisdiction will be assumed together with a statement of the size of territory in square miles.

(f) If the statute or statutes resulting in state assertion of jurisdiction is a surplus land statute, a legal description of the reservation boundaries that will be reestablished for purposes of the Indian Child Welfare Act.

(g) Total number of Indian children residing in the affected territory.

(h) Total number of members in the petitioning tribe or tribes.

(i) Current criteria for membership in the tribe or tribes.

(j) Explanation of procedure by which a person with a legitimate inferest in a child custody proceeding may determine whether a particular individual is a member of the tribe or tribes.

(k) Citation to provision in tribal constitution or similar governing document that authorizes the tribal governing body to exercise jurisdiction over Indian child custody matters.

(l) Description of judicial system that has been or will be established to adjudicate child custody disputes. The description shall include an organization chart and budget for the court. The source and amount of non-tribal funds that will be used to fund the court shall be identified.

(m) Copy of any tribal ordinances or court rules establishing procedures or rules for the adjudicating of Indian child custody matters.

(n) Description of support services (such as social service personnel and child care facilities) that will be available to the tribe or tribes when jurisdiction is reassumed.

(o) Estimate of the number of child custody cases expected during a year together with an explanation of how the number was estimated.

(p) Copy of any tribal agreements with states, other tribes or non-Indian local governments relating to child custody matters.

§ 13.12 Criteria for approval of reassumption petitions.

The Secretary shall approve a tribal petition to reassume jurisdiction over Indian child custody matters if:

(a) The territory affected by the petition was previously subject to tribal

jurisdiction and is presently occupied by the tribe;

(b) The constitution or other governing document of the petitioning tribe or tribes authorizes the tribal governing body or bodies to exercise jurisdiction over Indian child custody matters;

(c) The information and documents required by § 13.11 of this part have been provided;

(d) A tribal judicial system has been established that is capable of adjudicating child custody matters in a manner that meets the requirements of the Indian Civil Rights Act, 25 U.S.C. *et seq.*;

(e) Child care services sufficient to meet the needs of any child the tribal judicial system finds must be removed from parental custody are available; and

(f) The tribe or tribes have established a procedure for clearly identifying who is a member of the tribe or is eligible for membership.

§ 13.13 Technical assistance prior to petitioning.

(a) Upon the request of a tribe desiring to reassume jurisdiction over Indian child custody matters, BIA agency and Area offices shall provide technical assistance to enable the tribe to meet the requirements for Secretarial approval of the petition.

(b) Upon the request of such a tribe, to the extent funds are available, the BIA may provide funding to assist the tribe in developing the judicial and child care services that will be needed when jurisdiction is reassumed.

§ 13.14 Secretarial review procedure.

(a) Upon receipt of the petition the Secretary shall cause to be published in the Federal Register a notice stating that the petition has been received and is under review and that it may be inspected and copied at the BIA agency office that serves the petitioning tribe.

(b) The Secretary shall publish a notice in the Federal Register stating whether the petition has been approved or disapproved at least 45 days after the petition was received. Notice that a petition has been disapproved shall be published no later than 75 days after receipt. Notice that a petition has been approved shall be published on a date requested by the petitioning tribe or within 75 days after receipt—whichever is later.

(c) Notice of approval shall include a legal description of the territory subject to the reassumption of jurisdiction and shall state the date on which the reassumption becomes effective. A copy of the notice shall immediately be sent to the petitioning tribe and to the attorney general of the affected state or states.

(d) Notice that a petition has been disapproved shall state the reasons for the disapproval and shall immediately be sent to the petitioning tribe.

§ 13.16 Finality of decision by the Secretary.

The decision of the Secretary to approve or disapprove a tribal petition is final for the Department.

§ 13.17 Technical assistance after disapproval.

If a petition is disapproved, the BIA shall immediately offer technical assistance to the tribal governing body for the purpose of overcoming the defect in the petition or plan that resulted in the disapproval.

Rick Lavis,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 79-12399 Filed 4-20-79; 8:45 am]

BILLING CODE 4310-02-M

[25 CFR Part 23]

Indian Child Welfare Act

April 17, 1979.

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Proposed rulemaking.

SUMMARY: The Bureau of Indian Affairs proposes to add a new part to its regulations to implement the provisions of the Indian Child Welfare Act of 1978 (Pub. L. 95-608). The Indian child Welfare Act seeks to protect the best interest of Indian children by promoting the stability and security of Indian families and tribes by preventing the unwarranted and arbitrary removal of Indian children from their Indian homes; establishing procedures for transferring Indian child custody proceedings from State courts to the appropriate Tribal courts; setting forth criteria for placement of children voluntarily or involuntarily removed from their parents, guardians, or custodians; providing a system of intervention in state court proceedings by the child's parents, relatives or the child's tribe in involuntary removal and adoption matters of Indian children, and providing grants to Indian tribes and organizations on or "near" reservations or off reservations to plan, establish, operate and manage child placement and family service programs to carry out the intent of the act. It is intended that when published as final rulemaking, these regulations will complement those related procedures to be published in 25 CFR Part 13, Tribal Reassumption of Jurisdiction Over Child Custody Proceedings, and will also complement recommended guidelines for State courts relative to Indian child custody proceedings to be published as a Federal Register Notice.

DATE: Comments must be received on or before May 23, 1979.

ADDRESS: Written comments should be addresed to: Chief, Division of Social Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., Washington, D.C. 20245.

FOR FURTHER INFORMATION CONTACT: Raymond V. Butler, Chief, Division of Social Services, Bureau of Indian Affairs, telephone (703) 235-2756.

SUPPLEMENTARY INFORMATION: These proposed regulations incorporate viewpoints expressed during public hearings conducted during March, 1979. Additional and supplemental viewpoints are now solicited prior to publication of the regulations in final form. The authority for issuing these regulations is contained in 5 U.S.C. 301 and sections 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 209 DM 8. The primary authors of this document are Raymond V. Butler, Chief, Division of Social Services, Bureau of Indian Affairs, and David Etheridge, Office of the Solicitor, Department of the Interior.

Note.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

It is proposed to add Part 23 to Subchapter D, Chapter I, of Tite 25 of the Code of Federal Regulations to read as follows:

PART 23—INDIAN CHILD WELFARE ACT

Subpart A—Purpose, Definitions and Policy

Subpart B—Notice of Involuntary Child Custody Proceedings and Payment for Appointed Counsel

Subpart C—Grants to Indian Tribes and Indian Organizations for Indian Child and Family Programs

Authority: 5 U.S.C. 301; secs. 463 and 465 of the revised statutes (25 U.S.C. 2 and 9), and 209 DM 8.

Subpart A—Purpose, Definitions and Policy

§ 23.1 Purpose.

The purpose of the regulations in this Part is to govern the provision of administration and funding of the Indian Child Welfare Act of 1978 (Pub. L. 95–608, 92 Stat. 3069, 25 U.S.C. 1901–1952.)

§ 23.2 Definitions.

(a) "Act" means the Indian Child Welfare Act, Pub. L. 95–608 (92 Stat. 3073), 25 U.S.C. 1901 *et seq.*

(b) "Child custody proceeding" shall mean and include—

(1) "Foster care placement" which shall mean any action removing an Indian child from its parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(2) "Termination of parental rights" which shall mean an action resulting in the termination of the parent-child relationship;

(3) "Preadoptive placement" which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement; and

(4) "Adoptive placement" which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption.

(5) Such term or terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime or upon an award, in a divorce proceeding, of custody to one of the parents.

(c) "Extended family member" shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

(d) "Indian" means: (1) For purposes of matters related to child custody proceedings any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act (85 Stat. 688, 689); (2) For purposes of Indian child and family programs under sections 202 and 203 of the Indian Child Welfare Act (92 Stat. 3073) any person who, irrespective of whether he or she lives on or near a reservation, is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member, or is an Eskimo or Aleut or other Alaska Native, or is considered by the Secretary of the Interior to be an Indian for any purpose, or is determined to be an Indian under regulations promulgated by the Secretary.

(e) "Indian child" means any unmarried person who is under age eighteen and is either (1) a member of an Indian tribe, or (2) is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe. For services only under § 23.45(c) any person who is a member of an Indian tribe or any individual who (1) irrespective of whether he or she lives on or near a reservation, is a member of a tribe, band or other organized group terminated since 1940 or those recognized now or in the future by the State in which they reside, or who is the natural child or grandchild of any such member, or (2) is an Eskimo or Aleut or other Alaska Native, or (3) is considered by the Secretary of the Interior to be an Indian for any purpose, or (4) is determined to be an Indian under regulations promulgated by the Secretary.

(f) "Indian child's tribe" means (1) the Indian tribe in which an Indian child is a member or eligible for membership or (2) in the case of an Indian child who is a member of or eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts.

(g) "Indian custodian" means any Indian person who has legal custody of an Indian child under tribal law or custom or under State law or to whom temporary physical care, custody, and control has been transferred by the parent of such child.

(h) "Indian organization" means any group, association, partnership, corporation, or other legal entity owned or controlled by Indians, or a majority of whose members are Indians.

(i) "Indian tribe" means any Indian tribe, band, nation or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in Section 3(c) of the Alaska Native Claims Settlement Act (85 Stat. 688, 689), as amended.

(j) "Parent" means any biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. It does not include the unwed father where paternity has not been acknowledged or established.

(k) "Tribal court" means a court with jurisdiction over child custody proceedings and which is either a court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(l) For other applicable definitions refer to 25 CFR 20.1 and 271.2.

§ 23.3 Policy.

The policy of the Act and of these regulations is to protect Indian children

from arbitrary removal from their families and tribal affiliations by establishing procedures to insure that preventative measures are followed in child custody proceedings. This will insure protection of the best interests of Indian children and Indian families by providing assistance and funding to Indian tribes and Indian organizations in the operation of child and family service programs, reflecting the unique values of Indian culture and promoting the stability and security of Indian families. In administering the grant authority for Indian Child and Family Programs it shall be Bureau policy to emphasize the design and funding of programs to promote the stability of Indian families.

Subpart B—Notice of Involuntary Child Custody Proceedings and Payment for Appointed Counsel

§ 23.11 Notice.

If the identity or location of the parent or Indian custodian and tribe cannot be determined, notice of the pendency of any involuntary child custody proceeding involving an Indian child in a state court shall be given to the Secretary of the Interior by registered mail with return receipt requested. The proper address for transmittal of such information to the Secretary shall be published in the Federal Register and shall be sent to the Chief Justice of the highest court of appeal and the Attorney General of each state. The Secretary shall have 15 days, after receipt, to notify the parent(s), Indian custodian, and the Indian child's tribe, with a copy to the State court. If within the 15 day time period the Secretary is unable to make identification that the child is in fact an Indian, has an Indian parent(s) or Indian custodian, or has a relationship with an Indian tribe, the Secretary shall so notify the State court.

§ 23.12 Designated agent for service of notice.

Any Indian tribe entitled to notice may designate by resolution an agent for service of such notice other than the tribal chairman. The tribe shall send a copy of the resolution to the Secretary. The Secretary shall publish the name and address of the designated agent for service of notice in the Federal Register. The Secretary shall send the name and address of the tribe's designated agent to the Chief Justice of the highest court of appeal and the Attorney General of each state.

§ 23.13 Payment for appointed counsel in state Indian child custody proceedings.

(a) When a state court appoints counsel for an indigent party in an Indian child custody proceeding, for which the appointment of counsel is not authorized under state law, the court shall send written notice of the appointment to the Director of the Bureau of Indian Affairs Area Office that serves the tribe of the child whose custody is at issue. The notice shall include the following:

(1) Name, address and telephone number of attorney who has been appointed.

(2) Name and address of client for whom counsel is appointed.

(3) Relationship of the client to the child.

(4) Name of Indian child's tribe.

(5) Copy of the petition or complaint.

(6) Copy of affidavit of indigency or other document stating the facts on which the court based its determination that the client is indigent.

(7) Certification by the court that State law makes no provision for appointment of counsel in such proceedings.

(8) Certification by the court that the client is indigent under the State standards that apply in a juvenile delinquency proceeding.

(b) The Area Director shall certify that the client is eligible to have his or her appointed counsel compensated by the Bureau of Indian Affairs unless:

(1) The litigation does not involve a child custody proceeding as defined in 25 U.S.C. 1903(1);

(2) The child who is the subject of the litigation is not an Indian child as defined in 25 U.S.C. 1903(4);

(3) The client is neither the Indian child who is the subject of the litigation, the Indian child's parent as defined in 25 U.S.C. 1903(9), or the child's Indian custodian as defined in 25 U.S.C. 1903(6);

(4) The court has abused the discretion accorded it under State law to determine that the client is indigent;

(5) State law provides for appointment of counsel in such proceedings;

(6) The notice to the Area Director of appointment of counsel is incomplete, or

(7) No funds are available for such payments.

(c) No later than 15 days after receipt of the notice of appointment of counsel, the Area Director shall notify the court, the client and the attorney in writing whether the client has been certified as eligibile to have his or her attorney fees and expenses paid by the Bureau of Indian Affairs. In the event that certification is denied, the notice shall include written reasons for that decision together with a statement that the Area Director's decision may be appealed to the Commissioner of Indian Affairs under the provisions of 25 CFR Part 2.

(d) When determining attorney fees and expenses:

(1) The court shall determine the amount of payments due appointed counsel by the same procedures and criteria it uses in determining the fees and expenses to be paid appointed counsel in juvenile delinquency proceedings.

(2) The court shall submit approved vouchers to the Area Director who certified eligibility for BIA payment together with the court's certification that the amount requested is reasonable under the State standards and considering the work actually performed in light of the criteria that apply in determining fees and expenses for appointed counsel in juvenile delinquency proceedings.

(e) The Area Director shall authorize the payment of attorney fees and expenses in the amount requested in the voucher required unless:

(1) The court has abused its discretion under State law in determining the amount of the fees and expenses; or

(2) The client has not previously been certified as eligibile under paragraph (c) of this section.

(f) No later than 15 days after receipt of a payment voucher the Area Director shall send written notice to the court, the client and the attorney stating the amount of payment, if any, that has been authorized. If the payment has been denied or the amount authorized is less than the amount requested in the voucher, the notice shall include a written statement of the reasons for the decision together with a statement that the decision of the Area Director may be appealed to the Commissioner under the procedures of 25 CFR Part 2.

Subpart C—Grants to Indian Tribes and Indian Organizations for Indian Child and Family Programs

§ 23.21 Eligibility requirements.

The governing body of any tribe or tribes, or any nonprofit Indian organization, including multi-service Indian centers, may apply for a grant under this part.

§ 23.22 Purpose of grants.

(a) Grants are for the purpose of the establishment and operation of Indian child and family service programs. Examples in this specific regard are as follows:

(1) Operation and maintenance of facilities for the counseling and

treatment of Indian families and for the temporary custody of Indian children.

(2) Family assistance, including homemaker and home counselors, day care, afterschool care, and employment, recreational activities and respite care.

(3) Employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters.

(4) Education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs.

(5) Subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligibile as foster children, taking into account the appropriate State standards of support for maintenance and medical needs.

(6) Guidance, legal representation, and advice to Indian families involved in tribal, State, or Federal child custody proceedings.

(7) Home improvements programs.

(8) Other activities which have a direct and demonstrable relationship to the provision of child and family service programs.

(b) Preparation and implentation of child welfare codes. An example in this regard is establishment of a system for licensing or otherwise regulating Indian foster and adoptive homes.

(c) Funds made available for grants for the purposes described above may be applied as matching shares for other Federal or non-Federal grant programs as prescribed in § 23.43.

§ 23.23 Obtaining application instructions and materials.

Application instructions and related application materials may be obtained from Superintendents, Area Directors and the Commissioner.

§ 23.24 Content of application.

Application for a grant under this part shall include:

(a) Name and address of Indian tribal governing body(s) or Indian organization applying for a grant.

(b) Descriptive name of project.

(c) Federal funding needed.

(d) Population directly benefiting from the project.

(e) Length of project.

(f) Beginning date.

(g) Project budget categories or items.

(h) Program narrative statement.

(i) Certification or evidence of request by Indian tribe or board of Indian organization.

(j) Name and address of Bureau office to which application is submitted.

(k) Date application is submitted to Bureau.

(l) Additional information pertaining to grant applications for funds to be used as matching shares will be requested as prescribed in § 23.43.

§ 23.25 Application selection criteria.

(a) The Commissioner or designated representative, shall select Indian tribes and Indian organizations for grants under this part whose proposals will in his judgment best promote the purposes of Title II of the Act taking into consideration the following factors:

(1) The number of actual Indian child placements outside the home, the number of Indian family breakups, and the need for directly related preventive programs, all as determined by analysis of relevant statistical and other data available from tribal and public court records and from the records of tribal, Bureau, and private social services agencies serving Indian children and their families.

(2) The relative accessibility which the Indian population to be served under specific proposal already has to existing child and family service programs emphasizing prevention of Indian family breakup. Factors to be considered in determining relative accessibility include:

(i) Cultural barriers;

(ii) Discrimination against Indians;

(iii) Inability of potential Indian clientele to pay for services;

(iv) Lack of program which provide free service to indigent families;

(v) Technical barriers created by existing public or private programs;

(vi) Availability of transportation to existing programs;

(vii) Distance between the Indian community to be served under the proposal and the nearest existing program.

(3) The extent to which the proposed program would duplicate any existing child and family service program emphasizing prevention of Indian family breakup.

(b) Selection for grants under this part for on or near reservation programs shall be limited to the governing body of the tribe to be served by the grant. However, the governing body of the tribe may make a subgrant or subcontract subject to the provisions of § 23.36.

(c) Selection for grants under this part for off reservation programs shall be limited to those Indian organizations which can demonstrate local majority support from the Indian community or communities to be served by the grant. However, the Indian organization may make a subgrant or subcontract subject to the provisions of § 23.36. Factors to be considered in determining local majority support include:

(1) Letters of support from individuals and families to be served;

(2) Local Indian community representation in and control over the Indian entity requesting the grant.

(3) Other verifiable evidence of local majority support which may be accepted in lieu of paragraph (c) (1) and (2) of this section when the applicant is an established multi-service urban Indian center. Such evidence may include but not be limited to the organization's charter or its record of administration of grants or contracts obtained from private, state or other Federal governmental entities.

§ 23.46 Request from tribal governing body or Indian organization.

(a) The Bureau shall only make a grant under this part for an on or near reservation program when officially requested to do so by a tribal governing body. This request may be in the form of a tribal resolution, an endorsement included in the grant application or such other forms as the tribal constitution or current practice requires.

(b) The Bureau shall only make a grant under this part for an off reservation program when officially requested to do so by the governing body of an Indian organization. This request may be in one of the forms prescribed in paragraph (a) of this section and shall be further subject to the provisions of § 23.45(c) (1), (2), (3) above.

§ 23.27 Grant approval limitations.

(a) Area Office approval. Authority for approval of a grant application under this part shall be with the Area Director when the intent, purpose and scope of the grant proposal pertains soley to an Indian tribe or tribes, or to an Indian organization representing an off reservation community, located within that Area Director's administrative jurisdiction.

(b) Central Office approval. Authority for approval of a grant application under this part shall be with the Commissioner when the intent, purpose and scope of the grant proposal pertains to Indian tribes, off reservation communities or Indian organizations representing different Area office administrative jurisdictions but located within the Commissioner's overall jurisdiction.

(c) Grant approvals under this section shall be subject to availability of funds. These funds will include those which are:

(1) Directly appropriated for implementation of this Act. Distribution to approved applicants of these appropriated and available funds will be based upon the ratio of the number of Indian children under age 18 to be served under a specific proposal to the number of all Indian children under age 18 nationally. This is to insure insofar as possible that all approved applicants receive a proportionally equitable share sufficient to fund an effective program. This formula will be published as a Federal Register notice.

(2) Appropriated under other Acts for Bureau programs which are related to the puposes prescribed in § 23.22.

§ 23.28 Submitting application.

(a) *Agency Office.* An application for a grant under this part for an on or near reservation program shall be initially submitted to the appropriate Superintendent for review and recommendation as prescribed in § 23.29.

(b) *Area Office.* An application for a grant under this part for an off reservation program shall be initially submitted to the appropriate Area Director for review and action as prescribed in § 23.31.

§ 23.29 Agency office review and recommendation.

(a) Recommendation for appoval or disapproval of a grant under this part shall be made by the Superintendent when the intent, purpose and scope of the grant proposal pertains to or involves an Indian tribe or tribes located within that Superintendent's administrative jurisdiction.

(d) Upon receipt of an application for a grant under this part, the Superintendent shall:

(1) Acknowledge in writing receipt of the application within 10 days of its arrival at the Agency Office.

(2) Review the application for completeness of information and promptly request any additional information which may be required to make a recommendation.

(3) Assess the completed application for appropriateness of purpose as prescribed in § 23.22, and for overall feasibility.

(4) Inform the applicant, in writing and before any final recommendation, of any special problems or impediements which may result in a recommendation for disapproval; offer any available technical assistance required to overcome such problems or impediments; and solicit the applicant's written response.

(5) Recommend approval or disapproval following full assessment of the completed application and foward the application and recommendation to the Area Director for further action.

(6) Promptly notify the applicant in writing as to the final recommendation. If the final recommendation is for disapproval, the Superintendent will include in the written notice to the applicant the specific reasons therefor.

(7) In instances where a joint application is made by tribes representing more than one Agency Office administrative jurisdiction, copies of the application shall be provided by the applicants to each involved Superintendent for review and recommendation as precribed in this section.

§ 23.30 Deadline for agency office action.

Within 30 days of receipt of an application for a grant under this part, the Superintendent shall take action as prescribed in § 23.29. Extension of this deadline will required consultation with and written consent of the applicant.

§ 23.31 Area office review and action.

(a) Upon receipt of an application for a grant requiring Area Office approval, the Area Director shall:

(1) Review the application following applicable review procedure prescribed in § 23.29.

(2) Review the Superintendent's recommendation as pertains to the application.

(3) Approve or disapprove the application.

(b) In instances where a joint application is made by tribes representing more than one Area Office administrative jurisdiction, the Area Director shall add his recommendation for approval or disapproval to that of the Superintendent and shall forward the application and recommendations to the Commissioner for futher action.

(c) Upon taking action as prescribed in paragraph (a) or (b) of this section, the Area Director shall promptly notify the applicant in writing as to the action taken. If the action taken is disapproval or recommendation for disapproval of the application, the Area Director will include in the written notice the specific reasons therefor.

§ 23.32 Deadline for Area office action.

Within 30 days of receipt of an application for a grant under this part, the Area Director shall take action as prescribed in § 23.31. Extension of this deadline will required consultation with and written consent of the applicant.

§ 23.33 Central office review and decision.

Upon receipt of an application for a grant requiring Central office approval, the Commissioner shall:

(a) Review the application following the applicable review procedures prescribed in § 23.29.

(b) Review Agency and Area office recommendations as pertain to the application.

(c) Approve or disapprove the application.

(d) Promptly notify the applicant in writing as to the approval or disapproval of the application. If the application is disapprove, the Commissioner will include in the written notice the specific reasons therefor.

§ 23.34 Deadline for central office action.

Within 30 days of receipt of an application for a grant under this part the Commissioner shall take action as prescribed in § 23.33. Extension of this deadline will require consultation with and written consent of the applicant.

§ 23.35 Grant execution and administration.

(a) Grants approved pursuant to § 23.27(b) shall be executed and administered at the Central Office level: *Provided,* That the Commissioner may designate an Area office to execute or administer such a grant.

§ 23.36 Subgrants and subcontracts.

The grantee may make subgrants or subcontracts under this part: *Provided,* That such subgrants or subcontracts are for the purpose for which the grant was made and that the grantees retains administrative and financial responsibility over the activity and the funds.

Subpart D—General Grant Requirements

§ 23.41 Applicability.

The general requirements for grant administration in this part are applicable to all Bureau grants provided to tribal governing bodies and to Indian organizations under this part, except to the extent inconsistent with an applicable Federal statute or regulation.

§ 23.42 Reports and availability of information to Indians.

Any tribal governing body or Indian organization receiving a grant under this part shall make information and reports concerning that grant available to the Indian people which it serves or represents. Access to these data shall be requested in writing and shall be made available within 10 days of receipt of that request, subject to any exceptions

provided for in the Freedom of Information Act (5 U.S.C. 552), as amended by the Act of November 21, 1974 (Pub. L. 93–502; 88 Stat. 1561).

§ 23.43 Matching share.

(a) Specific Federal laws notwithstanding, grant funds provided under this part may be used as matching share for any other Federal or non-Federal programs which contribute to the purposes specified in § 23.22.

(b) Superintendents, Area Directors, and their designated representatives will, upon tribal or Indian organization request, assist in obtaining information concerning other Federal agencies with matching fund programs and will, upon request, provide technical assistance in developing applications for submission to those Federal agencies.

§ 23.44 Performing personal services.

Any grant provided under this part may include provisions for the performance of personal services which would otherwise be performed by Federal employees.

§ 23.45 Penalties.

If any officer, director, agent, or employee of, or connected with, any recipient of a grant, subgrant, contract or subcontract under this part, embezzles, willfully misapplies, steals, or obtains by fraud any of the money, funds, assets, or property which are the subject of such a grant, subgrant, contract, or subcontract, he or she may be subject to penalties as provided in 18 U.S.C. 1001.

§ 23.46 Fair and uniform services.

Any grant provided under this part shall include provisions to assure the fair and uniform provision by the grantee of services and assistance to all Indians included within or affected by the intent, purpose and scope of that grant.

Subpart E—Grant Revision, Cancellation or Assumption

§ 23.51 Revisions or amendments of grants.

(a) Request for budget revisions or amendments to grants awarded under this part shall be made as provided in § 276.14 of this chapter.

(b) Requests for revisions or amendments to grants provided under this part, other than budget revisions referred to in paragraph (a) of this section, shall be made to the Bureau officer responsible for approving the grant in its original form. Upon receipt of a request for revisions or amendments to grants, the responsible Bureau officer shall follow precisely the same review procedures and time specified in §23.29.

§ 23.52 Assumption.

(a) When the Bureau cancels a grant for cause as specified in §276.15 of this chapter, the Bureau may assume control or operation of the grant program, activity or service. However, the Bureau shall not assume a grant program, activity or service that it did not administer before tribal grantee control unless the tribal grantee and the Bureau agree to the assumption.

(b) When the Bureau assumes control or operation of a grant program cancelled for cause, the Bureau may decline to enter into a new grant agreement until satisfied that the cause for cancellation has been corrected.

Subpart F—Hearings and Appeals

§ 23.61 Hearings.

Hearings referred to in § 276.15 of this chapter shall be conducted as follows:

(a) The grantee and the Indian tribe(s) affected shall be notified in writing, at least 10 days before the hearing. The notice should give the date, time, places, and purpose of the hearing.

(b) A written record of the hearing shall be made. The record shall include written statements submitted at the hearing or within 5 days following the hearing.

(c) The hearing will be conducted on as informal a basis as possible.

§ 23.62 Appeals from decision or action by Superintendent.

(a) A grantee may appeal any decision made or action taken by a Superintendent under this part. Such appeal shall be made to the Area Director as provided in Part 2 of this chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

§ 23.63 Appeals from decisions or action by Area Director.

(a) A grantee may appeal any decision made or action taken by an Area Director under this part. Such appeal shall be made to the Commissioner as provided in Part 2 of this chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

§ 23.64 Appeals from decision or action by Commissioner.

(a) A grantee may appeal any decision made or action taken by the Commissioner under this part only as provided in Part 2 of this chapter.

(b) The appellant shall provide its own attorney or other advocates to represent it during the appeal process.

§ 23.65 Failure of agency or area office to act.

Whenever a Superintendent or Area Director fails to take action on a grant application within the time limits established in this part, the applicant may at its option, request action by the next higher Bureau official who has approval authority as precribed in this part. In such instances, the Superintendent or Area Director who failed to act shall immediately forward the application and all related materials to that next higher Bureau official.

Subpart G—Administrative Requirements

§ 23.71 Uniform administrative requirements for grants.

Administrative requirements for all grants provided under this part shall be those prescribed in Part 276 of this chapter.

Subpart H—Administrative Provisions

§ 23.81 Recordkeeping and information availability.

(a) Any state court entering a final decree or adoptive order for any Indian child shall provide the Secretary of the Interior within 30 days a copy of said decree or order, together with any information necessary to show:

(1) Name of the child and the tribal affiliation of the child;

(2) Names and addresses of the biological parents and the adoptive parents;

(3) Identity of any agency having relevant information relating to said adoptive placement.

To assure and maintain confidentiality where the biological parent(s) have by affidavit requested their identity remain confidential, a copy of such affidavit shall be provided the Secretary. Such information, pursuant to Sec. 301(a) of the Act, shall not be subject to the Freedom of Information Act (5 U.S.C. 552) as amended. The Secretary shall insure the confidentiality of such information is maintained. The proper address for transmittal of information required by Sec. 301(a) of the Act to the Secretary shall be published in the Federal Register and shall be sent to the Chief Justice of the highest court of Appeal and the Attorney General of each state. In some states, a state agency has been designated to be repository for all state court adoption information. Where such a system is operative, there is no objection to that

agency assuming reporting responsibilities for the purpose of this Act.

(b) The Division of Social Services, Bureau of Indian Affairs is authorized to receive all information and to maintain a central file on all state Indian adoptions. This file shall be confidential and only designated persons shall have access to it. Upon the request of the adopted Indian individual over the age of eighteen, the adoptive foster parents of an Indian child, or an Indian tribe, the Division of Social Services shall disclose such information as may be necessary for enrollment or determining any rights or benefits associated with membership. The Chief Tribal Enrollment Officer of the Bureau of Indian Affairs is authorized to disclose enrollment information relating to an adopted Indian child, where the biological parents have by affidavit requested anonymity. In such cases, the Chief Tribal Enrollment Officer shall certify to the child's tribe, where the information warrants, that the child's parentage and other circumstances entitle the child to enrollment consideration under the criteria established by said tribe.

Rick Lavis,

Deputy Assistant Secretary—Indian Affairs.

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DEPARTMENT OF THE INTERIOR
Bureau of Indian Affairs

Recommended Guidelines for State Courts—Indian Child Custody Proceedings

April 17, 1979.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary, Indian Affairs by 209 DM 8.

In order to facilitate the fullest possible measure of implementation of the Indian Child Welfare Act of 1978, Pub. L. 95-608, 92 Stat. 3069, 25 U.S.C., the following guidelines are provided and recommended for use by State courts in Indian child custody proceedings. The Act does not delegate to the Interior Department the authority to *mandate* procedures for state or tribal courts. Many judges, however, have indicated an interest in learning the views of this Department on how they might best implement the Act. These guidelines have been prepared to respond to those requests for our views.

It is intended that these guidelines will complement those related procedures to be published in 25 CFR Part 13, Tribal Reassumption of Jurisdiction Over Child Custody Proceedings, and also will complement those related procedures to be published in 25 CFR Part 23, Indian Child Welfare Act. Recommended guidelines for use by State courts involved in Indian child custody proceedings are:

(a) Definitions.

(1) "Tribal law or custom" means unwritten or written law or custom of the Indian child's tribe.

(2) "Qualified expert witness" shall be determined by the court. The court should take into consideration (i) a professional person having a substantial education and experience in the area of his or her specialty; (ii) a lay expert witness having substantial experience in the delivery of child and family services to Indians, and extensive knowledge of prevailing social and cultural standards and childrearing practices within the Indian community relevant to the Indian child who is the subject of the child custody proceeding; (iii) a member of the child's Indian community who is recognized within the community as an expert in tribal customs as they pertain to family organization and childrearing practices.

(3) "Tribal court" means a court with jurisdiction over child custody proceedings and which is either a court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

(b) Policy.

Proceedings in state courts involving custody of Indian children should follow strict procedures and meet stringent requirements to justify placing Indian children outside of their families or tribal communities.

(c) Determination of child as Indian child.

When the state court determines whether an Indian child is involved in an involuntary child custody proceeding, report on such inquiry should be made a part of the record and should detail the steps taken by the court to discover whether the child is an Indian child. A court should consider as actual or constructive knowledge that the child is an Indian child if:

(1) Any party to the case, Indian tribe, Indian organization or public or private agency informs the court that the child is an Indian child.

(2) Any public or state license agency involved in child protection services or family support has discovered information which suggests that the child is an Indian child.

(3) Any child who is involved in an involuntary proceeding gives the court reason to believe that he or she is an Indian child.

(4) The residence or domicile of the child, his natural parents, or Indian custodian is known by the court to be a predominantly Indian community.

(5) An officer of the court, involved in the proceeding, has knowledge that the child may be an Indian child.

If the court has such actual or constructive knowledge, it should seek independent verification of the information prior to a final determination that the child is an Indian child.

(d) Determination of Indian child's tribe.

(1) Where an Indian child is not enrolled in any tribe and is eligible for membership in more than one tribe, the court is called upon to determine with which tribe the child has more significant contacts. In arriving at such determination, the court should consider, among other things, the following factors:

(i) Length of residence or frequency of other contacts with a particular reservation;

(ii) Child's participation in tribal activities;

(iii) Child's fluency in language of a tribe;

(iv) Previous adjudication with respect to the child by a tribal court;

(v) residence on a reservation by the child's relatives;

(vi) Tribal membership of custodial parent or other Indian custodian; and

(vii) Interest asserted by a tribe in response to the notice given under (e)(2).

(2) The court's determination, together with the basis therefore shall be made part of the record, and notice of it shall be given to all parties as well as to all tribes which received notice under (e)(2).

(3) The tribe with which the child ultimately becomes a member should thereafter be considered the Indian child's tribe for all purposes under the Act and these guidelines.

(e) Notice.

(1) In any involuntary child custody proceeding, the state court should make inquiries to determine if the child involved is a member of an Indian tribe or is eligible for membership in an Indian tribe.

(2) In any involuntary Indian child custody proceeding, notice of the proceeding should be sent to the parent(s) or Indian custodian and the Indian child's tribe by registered mail with return receipt requested. The notice should be written in clear and understandable language and shall include information on:

(i) The name of the Indian child.

(ii) His or her tribal affiliation.

(iii) A copy of the petition, complaint or other document by which the proceeding was initiated.

(iv) The name of the petitioner and the name and address of petitioner's attorney.

(v) A statement of the right of the natural parent or Indian custodian and the Indian tribe to intervene in the proceeding.

(vi) A statement that if the parent or Indian custodian is unable to afford counsel, counsel will be appointed to represent him or her.

(vii) A statement of the right of the natural parent or Indian custodian or Indian child's tribe to have, on request, up to twenty additional days to prepare for the proceedings.

(viii) The location, mailing address and telephone number of the court.

(ix) A statement of the right of a parent or Indian custodian or the child's tribe to petition the court for transfer of the proceeding to the child's tribal court.

(x) The potential legal consequences of an adjudication on future custodial rights of the natural parent or Indian custodian.

(f) Extension of time.

A tribe, parent or Indian custodian which received notice from the petitioner of the pendency of a child

custody proceeding has the right, upon request, to be granted up to twenty days from the date upon which the notice was received to prepare for participation in the proceeding.

(g) Request for transfer of proceeding.

A parent or Indian custodian of the Indian child, or the child's tribe, may orally or in writing request the court to transfer the Indian child custody proceeding to the tribal court of the child's tribe. Where no timely request for transfer is made, the state court should hear the proceeding.

(h) Determination on transfer request.

Upon receipt of a request to transfer by a parent or Indian custodian or the tribe, the court must transfer the case unless either parent objects to such transfer, the tribal court declines jurisdiction, or the court determines that good cause to the contrary exists for declining the transfer.

(i) Good cause determination.

Good cause to the contrary should be determined by considering the following circumstances. These guidelines are neither inclusive or exclusive:

(1) The child's biological parents are deceased or unavailable.

(2) An Indian custodian or guardian has not been appointed.

(3) The child has had little or no contact with his Indian tribe, or members of his tribe, for a significant period of time.

(4) The child has not resided on his reservation for a significant period of time.

(5) A child, over twelve years of age, has indicated opposition to the transfer.

Socio-economic conditions and the perceived adequacy of tribal or Bureau social services or judicial systems shall not be considered in a determination that good cause exists.

(j) Tribal court acceptance or declination of transfer.

Any tribal court to which transfer is requested can without reason, decline to accept such transfer.

The tribal court should have 10 days from the receipt of notice of a proposed transfer within which time to accept that transfer. If no acceptance is received by the state court within that time, either orally or in writing, then it should be presumed that the tribal court has rejected the proposed transfer and the state court should proceed to adjudicate the petition.

If the tribal court accepts transfer, the state court should provide the tribal court with all available information on the status of the case.

(k) Access to reports.

Parents or Indian custodians or tribes who are party to a child custody proceeding under state law have the right to examine all reports or other documents filed with the court upon which any decision with respect to such action may be based.

(l) Child and family services requires prior to commencement of the proceedings.

Any party petitioning a state court for foster care placement or termination of parental rights to an Indian child must demonstrate to the court that prior to the commencement of the proceeding, active efforts have been made to prevent breakup of the Indian family. These efforts should take into account the prevailing social and cultural conditions and way of life in the Indian community.

(m) Standards of evidence in cases involving removal and placement of Indian children in involuntary proceedings.

The court may not issue an order effecting a foster care placement of an Indian child unless clear and convincing evidence is presented including testimony of qualified expert witnesses which clearly reflects that the child's continued custody with the child's parents or Indian custodian is likely to result in serious emotional or physical damage to the child.

The court may not order a termination of parent rights unless that determination is supported by evidence beyond a reasonable doubt, including testimony of qualified expert witnesses that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child.

(n) Execution of voluntary consent to foster care placement or to termination of parental rights.

A valid consent must be executed in writing and recorded before a judge of a court of competent jurisdiction. A certification of the court must accompany any consent and must certify that the terms and consequences of the consent were explained in detail and in the language of the parent or Indian custodian, if English is not the primary language, and were fully understood by the parent or Indian custodian.

(o) Content of consent.

(1) Any such consent should contain the name and birthdate of the Indian child, the name of the Indian child's tribe, any identifying number or other indication of the child's membership in the tribe, if any, and the name and address of the consenting parent or Indian custodian.

(2) A consent to foster care placement should contain, in addition to the information specified in (1), the name and address of the person or entity by or through whom the placement was arranged, if any, or the name and address of the prospective foster parents, if known at the time.

(3) A consent to termination of parental rights or adoption should contain, in addition to the information specified in (1), the name and address of the person or entity by or through whom any preadoptive or adoptive placement has been or is to be arranged.

(p) Withdrawal of consent to foster care placement.

Where a parent or Indian custodian has consented to a foster care placement under State law, such consent may be withdrawn at any time by filing, in the court where the consent was executed and filed, an instrument executed by the parent or Indian custodian. When a parent or Indian custodian withdraws consent to foster care placement, the child should as soon as is practicable, be returned to that parent or Indian custodian.

(q) Withdrawal of consent to adoption.

A consent to termination of parental rights or adoption may be withdrawn by the parent at any time prior to entry of a final decree of voluntary termination or adoption, by filing in the court where the consent was filed an instrument executed under oath by the parent stipulating his or her intention to withdraw such consent. The clerk of the court where the withdrawal of consent is filed should promptly notify the party by or through whom any preadoptive or adoptive placement has been arranged of such filing, and that party should insure the return of the child to the parent, as soon as is practicable.

(r) Petition to vacate adoption decree.

(1) Within two years after a final decree of adoption of an Indian child by a state court, or within any longer period permitted by the law of the state, a parent who executed a consent to termination of parental rights or adoption of that child, may petition the court in which the final adoption decree was entered to vacate the decree and revoke the consent on the grounds that such consent was obtained by fraud or duress.

(2) Upon the filing of such petition, the court should give notice thereof to all parties to the adoption proceeding, and should proceed to hold a hearing on the petition. Where the court finds that the parent's consent was obtained through fraud or duress, it must vacate the decree of adoption and order the consent revoked, and order the child returned to the parent.

(s) Adoptive placement.

(1) In any adoptive placement of an Indian child under state law, a preference must be given, absent good cause to the contrary, to placement of the child with:

(i) A member of the child's extended family;

(ii) Other members of the Indian child's tribe; or

(iii) Other Indian families, including families of single parents; in that order.

(2) The Indian child's tribe may establish a different order of preference by resolution. That order of preference must be followed as long as the placement is the least restrictive and most appropriate to meet the needs of the child.

(t) Foster care or preadoptive placement.

In any foster care or preadoptive placement of an Indian child:

(1) The child must be placed in the least restrictive setting which

(i) Most approximates a family

(ii) In which his special needs may be met; and

(iii) Which is in reasonable proximity to his or her home

(2) Preference must be given in the following order, absent good cause to the contrary, to placement with:

(i) A member of the Indian child's extended family;

(ii) A foster home, licensed, approved or specified by the Indian child's tribe, whether on or off the reservation;

(iii) An Indian foster home licensed or approved by an authorized non-Indian licensing authority; or

(iv) An institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the child's needs;

(3) The Indian child's tribe may establish a different order of preference by resolution, and that order of preference should be followed as long as the criteria enumerated in (1) are met.

(u) Good cause determination.

For purposes of any such foster care, preadoptive, or adoptive placement, a determination of good cause to the contrary for such placement in accord with the preferences set out above should consider:

(1) the requests of the biological parents, or the child when the child is of sufficient age.

(2) the special needs of the child—including educational, emotional, cultural, physical, and medical needs.

(3) the availability of suitable families for placement after a diligent search has been completed.

(v) Maintenance of records.

The state should maintain records, in a single location, of every foster care, preadoptive and adoptive placement of Indian children by courts of that state. The records of any such placement must be made available at any time, upon request, to the child's tribe or to the Secretary. The records should contain, at a minimum, the petition of complaint, all substantive orders entered in the proceeding, and the complete record of the placement determination.

(w) Notice of change in child's status.

Whenever a final decree of adoption of an Indian child has been vacated or set aside or the adoptive parent has voluntarily consented to the termination of his parental rights to the child, notice by the court or an agency authorized by the court should be given to the child's biological parent or prior Indian custodian. They should be informed of their right to petition for return of custody of the child.

(x) Adult adoptee rights.

Upon application by an Indian individual who has reached age 18 and who was the subject of an adoptive placement, the court which entered the final decree must inform such individual of the tribal affiliations, if any, of the individual's biological parents and provide such other information necessary to protect any rights flowing from the individual's tribal relationship.

(y) Emergency removal of child.

(1) Whenever an Indian child is removed from the physical custody of its parent or Indian custodian pursuant to the emergency removal or custody provisions of state law, the state authority, agency or official or the state court should immediately cause an inquiry to be made as to the residence or domicile of such Indian child.

(2) No later than the time within which, under state law, the state authority, agency or official must obtain a court order authorizing continued emergency physical custody, the state authority, agency of official should file an affidavit, as part of such emergency removal proceeding or otherwise, containing the following information:

(i) The name, age and last known address of the Indian child;

(ii) The name and address of the child's parent and Indian custodian if any. If such persons are unknown, a detailed explanation of what efforts have been made to locate the child's parent and Indian custodian, if any, should be provided;

(iii) Whether the residence of the parents, Indian custodian or child is within a reservation and which reservation;

(iv) The tribal affiliation of the child and the parent or Indian custodian;

(v) A specific and detailed account of the circumstances which led the state authority, agency or official to conclude that the child would suffer imminent physical damage or harm.

(vi) The specific actions that the state authority, agency or official is taking or has taken to secure the restoration of the child to his parent or Indian custodian, including the services provided, or to transfer the child to the jurisdiction of the appropriate Indian tribe.

(3) If the Indian child is not restored to its parent or Indian custodian, or if jurisdiction is not transferred to the appropriate Indian tribe, the state authority, agency or official must commence a state court proceeding for foster care placement as soon as the imminent physical damage or harm to the child which resulted in the emergency removal no longer exists.

(z) State-tribal agreements.

States and Indian tribes may enter into agreements with each other respecting care and custody of Indian children and jurisdiction over child custody proceedings.

These agreements may include informal transfer procedures on a case-by-case basis between state and tribal courts in those cases where all parties involved in the court proceeding, including parents, Indian custodian and Indian child if he or she is of sufficient age, express a preference in the adjudication process to transfer the proceedings to conclude that the tribal court can best serve the needs of the Indian child. The geographical proximity of the Indian child and family residence to the Indian child's reservation should be considered in making the transfer agreement for the provision of services.

Rick Lavis,

Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 79-12398 Filed 4-20-79; 8:45 am]

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Monday
April 23, 1979

Federal Register

Part. III

Federal Communications Commission

Simplification of FCC Rules for Recreational Boaters

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Part 83]

Simplification of the FCC's Rules for Recreational Boaters

AGENCY: Federal Communications Commission.

ACTION: Proposed rule making.

SUMMARY: This item proposed to simpify the marine radio rules for recreational boaters. The recreational boater will now have the option of purchasing Part 83 of the FCC's rules or a new publication entitled, *How to Use Your VHF Marine Radio.* This action is being taken by the Commission on its own initiative as part of a program of simplifying its rules and regulations. These new rules will provide the recreational boater with more easily understandable rules, and should lead to better compliance and radio operation in the marine VHF band.

DATES: Comments must be received on or before July 26, 1979, and Reply Comments must be received on or before August 27, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Bruce A. Franca, Private Radio Bureau, (202) 632.7175.

SUPPLEMENTARY INFORMATION:
Adopted: April 12, 1979.
Released: April 17, 1979.

By the Commission: Chairman Ferris issuing a Separate Statement; Commissioner Washburn absent.

In the matter of Simplification of the FCC's rules for recreational boaters, PR Docket No. 79–86.

1. The FCC proposes to simplify some of its marine radio rules. The rules we are proposing are written in plain English. We are doing this to make our rules easier to read. We hope more people will understand and obey our rules as a result.

What is the Background of our Proposal?

2. Most recreational or pleasure boats are not required by law to have two-way marine radios. However, for safety or other reasons, about 300,000 recreational boaters have put marine radios on their boats. The FCC's rules say that if you have a two-way marine radio on your boat, you must get a copy of Part 83 of the FCC's rules.[1] (Part 83 of the FCC's rules is about shipboard stations in the Maritime Radio Services.)

Why are we Proposing New Rules?

3. There are several problems with the current rules. First, most two-way marine radios are on boats that *do not have to have* radios. But most of the rules in Part 83 are about vessels that *do have* to have radios (such as, large passenger and commercial vessels). So a typical recreational boater must buy rules mostly unrelated to his or her radio operation. Second, Part 83 is available only as part of Volume IV of the FCC's rules. This volume contains an entirely separate rule part—Part 81—not needed by the recreational boater. Third, Volume IV costs $15.75. Only about 10% of those who are supposed to buy the rules actually do so. Finally, many of the rules are hard to understand. Some are poorly written. Others are too technical or use words the average reader does not know.

What Rules are we Proposing and Why?

4. Every boat equipped with a marine radio is part of an international *safety* system. The system is called the Maritime Mobile Radio Service. It's important, therefore, that marine radio communications be conducted correctly. We think one way we might encourage better communications is to provide recreational boaters with rules they can understand. To do this, we propose to rewrite the very high frequency (VHF) marine radio rules in plain English. We also propose to publish these new rules in a booklet separate from Part 83. The recreational boater will then have available at low cost all the rules he or she needs to know to use a marine radio. We propose, further, to require the recreational boater to have *either* a copy of Part 83 *or* a copy of the new simplified rules.

5. We believe we should provide the public with useful and readable rules. We think the public is more likely to obey rules they can understand. Our proposal to adopt these new simple marine radio rules is an important step in our attempt to write rules in plain English.[2] Where possible, we will continue to give the public the simplest, most readable rules we can.

6. The exact rules we are proposing appear below. Authority for this action is contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended.

How to File Comments

7. Public participation in this rulemaking is very important. Although the rule changes we are proposing are mostly editorial in nature, we are giving the the public 90 days to comment. We are also providing 30 days to comment on comments filed by others. (These are called "reply comments.") During this period, we hope many persons will study our proposals carefully and submit thoughtful comments. Although this Notice only proposes rules for VHF radios, we would like to get comments on the value of simplified rules for other kinds of radio operation.

8. *How Comments should be prepared.* Comments must clearly show Docket No. on the first page.

9. *How many copies should be sent?* Sec. 1.419 of the FCC Rules requires that the original and 5 copies of comments be filed. If you want each Commissioner to receive a personal copy of your comments, you should include 6 extra copies. The FCC will fully consider all relevant and timely comments before it takes final action. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order.

10. *Where to send Comments.* Send comments to Secretary, Federal Communications Commission, Washington, D.C. 20554.

11. *How to see the Comments of other parties.* All comments will be available for public inspection in the FCC Dockets Reference Room, Room 239, 1919 M St., NW, Washington, D.C. The FCC is open weekdays between 8:00 a.m. and 5:30 p.m.

12. *Deadline for filing Comments.* Comments must be received by July 26, 1979. Replies to comments must be received by August 27, 1979.

13. If you have questions about this document, contact Bruce A. Franca (202) 632–7175. (This is not a toll-free number.)

Federal Communications Commission.[3]
William J. Tricarico,
Secretary.

Appendix

Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is amended to read as follows:

[1] The FCC waived this rule for recreational boaters in an Order released June 14, 1978, FCC Mimeo 1909.

[2] See also, *In the Matter of Revision of Subpart D of Part 95 of the Commission's Rules, Citizens Band Radio Service,*——FCC——2d (1978); *The Law of Political Broadcasting,* 43 FR 36342 (1978).

[3] See attached statement of Chairman Ferris.

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

1. In § 83.367, paragraph (b) is amended by the addition of a footnote to read as follows:

§ 83.367 Station documents.

(a) * * *

(b) Ship radiotelephone stations not subject to the Safety Convention shall be provided with the documents listed in subparagraphs (1), (2), (3), and (6)[1] of paragraph (a) of this section. At the option of the licensee of a radiotelephone station not subject to the compulsory equipment requirements of the Communications Act or the Great Lakes Agreement, the required copy of part 83 of the Commission's rules may be retained in a suitable place on shore in lieu of being provided aboard the vessel.

2. A new Subpart CC is added to read as follows:

Subpart CC—How To Use Your VHF Marine Radio

Table of Contents

[1] The separate publication (Subpart CC of Part 83) entitled, *How to Use Your VHF Marine Radio*, may be substituted for the required copy of Part 83 of this chapter in the case of voluntarily equipped VHF radiotelephone ship stations.

Subpart CC—How To Use Your VHF Marine Radio

General

VHF Marine Rule 1 Who are these rules for?

These rules are for recreational boaters who have put VHF (*Very High Frequency*) marine radios on their boats. A VHF marine radio is a two-way radio for boaters. VHF marine radios operate on channels in the very high frequency band between 156 and 162 MHz.

VHF Marine Rule 2 What do these rules tell me?

Rules 3 through 9 tell you how to get a license for your radio. Rules 10 through 20 tell you how to operate your radio.

How To Get a License

VHF MARINE RULE 3 Do I need a license?

You must have both a SHIP STATION LICENSE and at least a RESTRICTED RADIO-TELEPHONE OPERATORS PERMIT (RP) before you use your radio.

VHF MARINE RULE 4 How do I apply for my license and for my RP?

(a) Use FCC Form 506 [1] to apply for a ship station license. The license term is for five years. You may not transfer this license to another person or boat.

(b) Use FCC Form 753 to apply for an RP. You must be at least 14 years old. There is no test required. The RP is issued for your lifetime.

VHF MARINE RULE 5 May I operate my marine radio while my applications are being processed?

(a) You may operate your marine radio after you have mailed your applications to the FCC, if—

(1) You fill out a temporary operating authority application (FCC Form 506-A), and

(2) You *keep* this form with your station records. The completed form *is* your temporary operating authority.

(b) This temporary operating authority is valid for 60 days after you mail your applications to the FCC.

VHF MARINE RULE 6 How do I make changes during my license term?

(a) The following table tells you what you must do for changes during your license term:

If you:	You must:
Change your mailing address..	Tell the FCC in writing.
Change your name.....	Tell the FCC in writing.
Are a corporation and the ownership or control of the corporation changes.	Apply for a new ship station license.
Add or replace a transmitter which operates in the same frequency band.	(No action required)
Add a transmitter which operates in a new frequency band.	Apply for modification of your ship station license.

(b) Send your written notice of change to FCC, P.O. Box 1040, Gettysburg, PA. 17325.

(c) Use FCC Form 506 to modify your ship station license.

VHF MARINE RULE 7 How do I renew my license?

(a) Use FCC Form 405-B to renew your license. The FCC will send you this form about 4 to 8 weeks before your license expires. If you do not receive this form, you may use FCC Form 506 to renew your license.

(b) If you send in your renewal form before your license expires, you may continue to operate under that license until the FCC acts on your application. You do not need a temporary permit, but you should keep a copy of the application you send the FCC.

(c) You must stop transmitting as soon as your license expires, unless you have already sent your renewal application to the FCC. You may not begin transmitting again until you have received a new license from the FCC. However, if in distress, you may use your radio.

VHF MARINE RULE 8 What do I do if I lose my license or RP?

(a) If you lose your license, you must request a duplicate from the FCC, Gettysburg, PA 17325. Your request must include your name, your address and your station call sign.

(b) If you lose your RP, you must request a duplicate from the FCC. Use FCC Form 753 to request a duplicate RP.

VHF MARINE RULE 9 What must I do if I sell my boat?

If you sell your boat, you must send your ship station license to the FCC, Gettysburg, PA 17325 for cancellation. You cannot transfer your ship station license to another person or boat.

How To Operate Your Radio

VHF MARINE RULE 10 What type of equipment must I have?

(a) Your radio must be type accepted by the FCC. You can tell a type accepted radio by the type acceptance label on the radio. You may look at a list of type accepted radios at any FCC field office or at FCC headquarters.

(b) The power output of your radio must not be more than 25 watts. You must also be able to lower the power of your radio to one watt or less.

[1] FCC Form 506 is a new application form that replaces FCC Form 502 beginning April 1, 1979.

(c) Your radio must be able to transmit on channel 16, channel 6 and at least one other channel.

VHF MARINE RULE 11 May I install and service my Marine radio?

(a) You may install your radio in your boat.

(b) All repairs or adjustments to your radio must be made by, or under the supervision of, an FCC licensed first or second class commercial operator.

VHF MARINE RULE 12 What channels may I use?

(a) Each channel is used only for certain types of messages. You must choose a channel which is available for the type of message you want to send. Except where noted, channels are available for both ship-to-ship and ship-to-coast messages.

VHF MARINE RULE 13 How do I operate my marine radio?

(a) *Maintain your watch.* Whenever your radio is turned on (and not being used for messages), keep it tuned to Channel 16.

(b) *Power.* Try one watt first if the station being called is within a few miles. If no answer, you may switch to higher power.

(c) *Calling coast stations.* Call a coast station on its working channel. You may use Channel 16 when you do not know the working channel.

(d) *Calling other boats or ships.* Call other boats or ships on Channel 16. You may call on ship-to-ship working channels when you know that the boat is listening on both a working channel and Channel 16.

Note.—To do this, the boat has to have two separate receivers.

(e) *Limits on calling.* You must not call the same station for more than 30 seconds at a time. If you do not get a reply, wait at least two minutes before calling again. After three calling periods wait at least 15 minutes before calling again.

(f) *Change to a working channel.* After contacting another station on Channel 16, change immediately to a working channel.

(g) *Station identification.* Identify your station by your FCC call sign at the beginning and end of each message. identify in English.

VHF MARINE RULE 14 What communications are prohibited?

YOU MUST *NOT* TRANSMIT—

(a)—False distress or emergency messages;

(b)—Message containing obscene, indecent or profane words or meaning;

Type of message	Channel(s) available
DISTRESS, SAFETY AND CALLING.—Use this channel to get the attention of another station (calling) or in emergencies (distress and safety).	16
INTERSHIP SAFETY.—Use this channel for ship-to-ship safety messages, and for search and rescue messages with ships and aircraft of the Coast Guard.	6
COAST GUARD LIAISON.—Use this channel to talk to the Coast Guard. (But first make contact on Channel 16).	22
NONCOMMERCIAL.—Working channels for recreational boats. Messages must be about the needs of the vessel. Typical uses include: fishing reports, rendezvous, scheduling repairs, and berthing information. Use Channels 70 and 72 only for ship-to-ship messages.	9, 68, 69, 70, 71, 72, 78
COMMERCIAL.—Working channels for *commercial vessels only.* Messages must be about business or the needs of the vessel. Use Channels 8, 67 and 88 only for ship-to-ship messages.	7, 8, 9, 10, 11, 18, 19, 67, 79, 80, 88 [1]
PUBLIC CORRESPONDENCE (MARINE OPERATOR).—Use these channels to call the marine operator at a public coast station. By contacting a public coast station, you can make and receive calls from telephones on shore. Except for distress calls, public coast stations usually charge for this service.	24, 25, 26, 27, 28, 84, 85, 86, 87, 88 [2]
PORT OPERATIONS.—These channels are used in directing the movement of ships in or near ports, locks or waterways. Messages must be about the operational handling, movement and safety of ships. In certain major ports, Channels 11, 12 and 14 are being used for the Vessel Traffic Service systems being developed by the Coast Guard, and are not available for general port operations messages. Use channel 20 only for ship-to-coast messages.	5,[3] 12, 14, 20, 65, 66, 73, 74
NAVIGATIONAL.—(also known as the bridge-to-bridge channel). This channel is available to all ships. Messages must be about vessel navigation; for example: passing or meeting other vessels. You must keep your messages short. Your power output must not be more than one watt. This is also the main working channel at most locks and drawbridges.	13
STATE CONTROL.—This channel may be used to talk to ships and coast stations operated by State or local governments. Messages must be about State regulation and control of boating activities.	17
WEATHER.—On these channels you may receive weather broadcasts of the National Oceanic and Atmospheric Administration. These are receive only channels.	WX-1(162.550 MHz) WX-2(162.400 MHz) WX-3(162.445 MHz)

[1] Not available in Great Lakes and St. Lawrence Seaway.
[2] For use in Great Lakes and St. Lawrence Seaway only.
[3] Available only in Houston and New Orleans areas.

(c)—General calls, signals or messages, except in an emergency or if you are testing your radio, (these are messages not addresed to a particular station); or

(d)—When your boat is on land (for example, while the boat is on a trailer).

VHF MARINE RULE 15 Do I have to keep a raido log?

(a) You must keep a radio log. A radio log is a book in which you keep information about your radio. The radio log must be neat and orderly. Each page of the log must be numbered, signed by the operator, and show the name and call sign of your boat. You must keep your radio log for at least one year. (This period begins from the day of the last entry.)

(b) You must make the following entries in your radio log:

(1) Each distress (*MAYDAY*) message you send or hear;

(2) Each urgency (PAN PAN) or safety (SECURITY) message you send; and

(3) All information about the installation and servicing of your radio.

(c) For more information on distress messages, urgency messages and safety messages, see VHF Marine Rule 19.

VHF MARINE RULE 16 Do I need a copy of the FCC's rules?

(a) You must have either a current copy of these VHF marine rules, or a copy of Part 83. Part 83 is contained in Volume IV of the FCC's rules and Regulations.

(b) Both these VHF marine rules and Volume IV are available from the Superintendent of Documents, Government Printing Office. See Order Form at the end of these rules.

VHF MARINE RULE 17 Do I have to make my ship station available for inspection?

Your station and your station records (radio log, station license and operator license or RP) must be shown when requested by an authorized FCC representative.

VHF MARINE RULE 18 What happens if I violate these rules?

(a) If it appears to the FCC that you have violated the Communications Act or these rules, the FCC may send you a written notice of the apparent violation.

(b) If the violation notice covers a technical raido standard, you must stop using your radio. You must not use your radio until you have had all the technical problems fixed. You may have to have tests conducted. You may have to report the results of those tests to the FCC. Test results must be signed by the commercial operator who conducted that test.

(c) If the FCC finds that you have willfully or repeatedly violated the Communications Act or these rules, your license may be revoked and you may be fined or sent to prison.

Emergency Operating Requirements

VHF MARINE RULE 19 What are the marine emergency signals?

(a) The three spoken international emergency signals are:

(1) *MAYDAY*—The distress signal MAYDAY is used to indicate that a station is threatened by grave and imminent danger and requests immediate assistance. MAYDAY has priority over all other messages.

(2) *PAN PAN*—The urgency signal PAN is used when the safety of the vessel or person is in jeopardy.

(3) *SECURITY*—The safety signal SECURITY is used for messages about the safety of navigation or important weather warnings.

(b) You must give any message beginning with one of these signals priority over routine messages.

VHF MARINE RULE 20 What is the marine distress procedure?

Marine Distress Communications Form
Speak Slowly—clearly—calmly

1. Make sure your radio is on.
2. Select *VHF Channel 16* (156.8 MHz).
3. Press microphone button and say: "Mayday—Mayday—Mayday."
4. Say: "This is ———————."
Your Boat Name/Call Sign repeated three times
5. Say: "Mayday ———————."
Your Boat Name
6. Tell where you are: (What navigational aids or landmarks are near.)
7. State the nature of your distress.
8. Give number of persons aboard and conditions of any injured.
9. Estimate present seaworthiness of your boat.
10. Briefly describe your boat:
——— Feet ———: ———
Hull.
Length
Type
Color
11. Say: "I will be listening on *channel 16.*"
12. End Message by saying: "This is ———————. Over"
Your Boat Name and Call Sign
13. Release microphone button and listen: Someone should answer. If they do not, repeat call, beginning at item no. 3 above.

Additional Statement of Charles D. Ferris on the FCC's Simplification of its Rules for Recreational Boaters

Today's action is another step in the Commission's efforts to simplify and clarify our rules in order to provide better service to the public. Even more important, these rules should increase maritime safety.

Every boat equipped with a marine radio and complying with these rules is part of an international safety system. Approximately 300,000 recreational boaters have now put marine radios on their boats. But Commission's rules governing marine radio can now be purchased only in conjunction with other rules for commercial and other maritime users that recreational boaters are not required to have. These rules are overly complex. Thus, we have been placing unreasonable burdens on the small boater that invite non-compliance and add to the lack of credibility of regulation, even where it—as here—serves an important public purpose.

Adoption of new and simplified rules more readily available to the boating public follows the precedent set by our Plain English Citizens Band Rules. It demonstrates the Commission's renewed commitment to acting effectively *and* clearly.

[PR Docket No. 79-86; FCC 79-221]
[FR Doc. 79-12407 Filed 4-20-79; 8:45 am]
BILLING CODE 6712-01-M

Federal Register

Monday
April 23, 1979

Part IV

Department of Housing and Urban Development

Office of Interstate Land Sales Registration

Guidelines for Exemptions Available Under the Interstate Land Sales Full Disclosure Act

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Interstate Land Sales Registration

Guidelines for Exemptions Available Under the Interstate Land Sales Full Disclosure Act

AGENCY: Office of Interstate Land Sales Registration.

ACTION: Notice of Guidelines.

SUMMARY: These Guidelines are intended to provide information concerning the requirements for statutory and regulatory exemptions available to developers which are contained in the rules and regulations (24 CFR 1710.10 through 1710.18) issued pursuant to the Interstate Land Sales Full Disclosure Act. The Guidelines contain agency positions, interpretations and descriptions of the individual elements of eligibility criteria for each exemption. The underlying purpose of the Guidelines is to assist developers in identifying eligibility for all self-determined exemptions and to provide guidance in those cases where the submission of material to HUD is required.

DATE: Effective June 11, 1979.

FOR FURTHER EXEMPTION INFORMATION CONTACT: Roger G. Henderson, Director, Policy Development and Control Division, Office of Interstate Land Sales Registration, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

SUPPLEMENTARY INFORMATION: Since April 2, 1975 when the Department last issued Exemption Guidelines, the Department has issued numerous opinions and orders on various exemptions. These Guidelines incorporate those interpretations and agency policies into one document.

In addition, new statutory changes that were passed by the Congress in 1978 and new regulations that have been published after a long period of public comment and consideration, both contain several new self-determining exemptions. These Guidelines will assist the public in understanding these new exemptions especially during the initial period of their implementation.

The Exemption Guidelines do not change any of the provisions of the published regulations. The Guidelines exist to provide guidance to the public on what constitutes eligibility for exemption, what to do if eligibility exists and what to do if there are questions as to eligibility.

Accordingly, the Exemption Guidelines are published as follows:

Guidelines for Exemptions Available Under the Interstate Land Sales full Disclosure Act

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Guidelines for Exemptions Available Under the Interstate Land Sales Full Disclosure Act

Part I

Introduction

The Office of Interstate Land Sales Registration (OILSR) of the U.S. Department of Housing and Urban Development, is offering these guidelines to clarify agency policies and positions with regard to the exemption provisions of the Interstate Land Sales Full Disclosure Act (the Act), Public Law 90-448 (15 U.S.C. 1701), as amended, and implementing rules and regulations, 24 CFR 1700 *et seq.* These guidelines are intended to assist you in determining whether or not a real estate offering is exempt from any or all of the requirements of the Act.

These are guidelines, not substantive regulations. Not every conceivable factor of the exemption process is covered in these guidelines and variations may occur in unique situations. Examples are given, but the examples do not in any way exhaust the myriad of possibilities occurring in land development and land sales activity nor do they set absolute standards.

In order to understand the exemptions, the jurisdictional scope of the Interstate Land Sales Full Disclosure Act must be understood. Effective on April 28, 1969, the Act generally applies to lot sales programs of 50 or more lots offered pursuant to a common promotional plan where any means or instruments of transportation or communication in interstate commerce, or the mails, are used to sell or lease lots. Intrastate use of the mails or advertising in media which has interstate circulation is enough to establish jurisdiction. Generally, if a real estate offering falls under the jurisdiction of the Act, a developer must register the subdivision. Registration includes filing a Statement of Record and supporting documentation with HUD and providing prospective purchasers and effective Property Report containing important facts about the subdivision and the developer.

The Act provides exemptions from some or all of the requirements of the law for subdivisions with particular characteristics, for certain individual lot

sales transactions, or for real estate meeting specific criteria. In addition, the Act gives the Secretary of HUD authority to issue rules and regulations to exempt subdivisions or lots in a subdivision where, by reason of the small amount involved or the limited character of the offering, enforcement of the Act (i.e., full registration and disclosure) is not necessary in the public interest and for the protection of purchasers.

As exceptions to the registration and full disclosure requirements of the Act, exemption requirements are strictly construed. The exemption requirements do not prescribe a method of operation or dictate how you should develop a subdivision. The exemptions are available if your real estate operation falls within their requirements. If your offering is subject to the Act and does not qualify for an exemption, you must fully register the subdivision. The requirement of full registration does not imply that the value of your real estate is questioned or the integrity of your business is suspect. The law simply provides to prospective purchasers the right to adequate disclosure of facts about a subdivision so that an informed decision about the potential purchase can be made.

In order to fully understand the basis of eligibility for any of the exemptions, an understanding of frequently used terms is necessary.

Part II

Definitions

(a) *Subdivision.*—The statute defines a subdivision as "any land located in any State or in a foreign country, which is divided or proposed to be divided into 50 or more lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan. . . ." This means that if you have, or intend or plan to have 50 or more lots which will be offered for sale as part of a common promotional plan, you have a subdivision. It is not necessary that you personally subdivide the land or that you have 50 lots in inventory at one time. For jurisdictional purposes, both exempt and non-exempt lots are counted. For example, a developer having 30 lots on which houses are already erected plus 21 contiguous, unimproved lots would have a subdivision (as defined by the Act) of 51 lots even though the sale of improved lots with houses may be exempt from the requirements of the Act under Section 1403(a)(3) (15 U.S.C. 1702(a)(3)).

The statute states that a common promotional plan is presumed to exist: "where subdivided land is offered for sale or lease by a developer, or a group of developers acting in concert and such land is contiguous or is known, designated, or advertised as a common unit or by a common name . . . without regard to the number of lots covered by each individual offering."

Other characteristics evaluated by HUD in determining whether or not a common promotional plan exists include, but are not necessarily limited to: a thread of common ownership; same or similar name or identity; common sales agents; common sales facilities; common advertising; common inventory; etc. The presence of one or more of the characteristics does not necessarily denote a common promotional plan. Conversely, the absence of a characteristic does not demonstrate that there is no common promotional plan.

The one essential element of a common promotional plan is a thread of common ownership or developers acting in concert. HUD considers the involvement of all principals holdings a ten percent or greater interest in the subdivision to determine whether there is a thread of common ownership. If there is a thread of common ownership of if the developers are acting in concert in two or more offerings, the use of common advertising, the same sales agents or use of the same sales office usually leads to the assumption that a common promotional plan exists. HUD's experience has led to the conclusion that most sales agents will direct a prospective purchaser to any or all properties in inventory in order to make a sale.

The phrase "common promotional plan" is most often misunderstood by those who believe that "promotion" implies an enthusiastic sales campaign. Any method used to attract potential purchasers is, in fact, the "promotional plan". For example, direct mail campaigns and free dinners may be the promotional plan of one developer while another developer's promotion may be limited to classified advertisements in a local newspaper. Where only "word of mouth" advertising is used for all cash sales, jurisdiction may not exist.

(b) *Site.*—A site is a group of contiguous lots or lots designated or known by the same or similar name, whether such lots are actually divided or merely proposed to be divided.

Since a subdivision consists of all lots offered under one common promotional plan, several sites may be included in one subdivision. The term "site" has been interjected into the Regulations to define a separate grouping of contiguous lots which are not known or designated by the same or similar name as other lots under the same ownership. It is possible that a site and a subdivision could be comprised of the same property if a developer is offering only one grouping of lots for sale. Experience has shown that developers are often involved in more than one real estate venture. Frequently, the real estate ventures are collectively considered to be one subdivision because of the application of the common promotional plan concept (discussed above). For purposes of these exemption guidelines, each group of lots which is neither contiguous to other owned property nor known or designated by the same or similar name as other owned property will be considered a "site".

You may have a subdivision which is comprised of two sites: one site of half-acre lots for primary homes known as Townsend Estates and one site of three-acre lots with equestrian emphasis known as Appaloosa Acres. Even though these sites may be separated by geographic location and known by separate and distinct names, the use of the same sales agents or the same advertisements for both sites would denote a common promotional plan and, hence, one "subdivision." If these sites were contiguous or known by similar names, such as Townsend Estates and Townsend Trails, they would be considered one site as well as one subdivision.

For purposes of describing site, lots are considered contiguous even though contiguity may be interrupted by a road, park, small body of water, recreational facility or in any similar manner. For example, a stream that meanders through the property or a gold course that is part of the attraction to the property would not break the contiguity. Similarly, greenbelts or areas designated as a common property would not break the contiguity.

(c) *Sale.*—A sale is made when a purchaser has entered into any obligation or arrangement for consideration to purchase a lot directly or indirectly. There is a sale when a purchaser signs a contract, even if that contract contains contingencies beyond the control of the seller. Even if a developer uses a contract which states that the sale is contingent upon effective registration with or obtaining an exemption from HUD, the execution of such a contract still constitutes a sale inasmuch as the purchaser's obligation for consideration to purchase a lot is unqualified.

(d) *Reservations.*—To gauge market feasibliity a developer may take reservations. A reservation is a

transaction whereby a purchaser expresses an interest to buy or lease a lot at some time in the future. A deposit may be accepted from the interested person provided that the money is placed in escrow with an independent institution having trust powers and is refundable at any time at the option of the purchaser. In all cases, a reservation must require a subsequent affirmative action by the prospective purchaser by way of a separate instrument to create a binding obligation. Typically, this action would be the execution of a formal contract of sale. If the real estate project goes forward, the seller cannot unilaterally revoke the reservation agreement.

In no event may a document purporting to be a Property Report or other evidence of compliance with the Act be delivered to an interested party when entering a reservation agreement for a lot or proposed condominium unit which is neither exempt nor effectively registered.

Part III

Statutory Exemptions Requiring No Determination By HUD

Statutory exemptions are included under sections 1403(a)(1) through 1403(a)(11) and 1403(b) of the Act. With the exception of the exemption under 1403(a)(10), you do not need to contact HUD if the offering or transaction qualifies for a statutory exemption. The discussions that immediately follow pertain to sections 1403(a)(1) through 1403(a)(9) and 1403(a)(11) which correspond with 15 U.S.C. 1702(a)(1) through 1702(a)(9) and 1702(a)(11). The exemptions are codified at 24 CFR 1710.10(a) through 1710.10(j). Exemptions under 1403(a)(10) and 1403(b) are the subject of Parts IV and V of these guidelines.

If you have any questions whatsoever concerning whether or not your real estate offering qualifies for one of the statutory exemptions described below, you are encouraged to seek legal counsel or obtain an Advisory Opinion before making any sales or leases. Experience has shown that developers are sometimes ill-advised as to the applicability of the Act to their offering, resulting in violative sales and the disruption of business. The instructions and format for obtaining an Advisory Opinion are contained in section 1710.16 of the regulations and in Part VIII of these guidelines.

Real estate offerings which meet one or more of the following provisions are exempt unless the method of operation has been adopted for the purpose of evading the requirements of the law. Each exemption is designated by the applicable section of the Act and regulations.

(a) *Fifty Lots Not Under a Common Plan.*—(Section 1403(a)(1) [15 U.S.C. 1702(a)(10)] and 24 CFR 1710.10(a)).

This section exempts the sale or lease of real estate not pursuant to a common promotional plan to offer or sell 50 or more lots in a subdivision since April 28, 1969. If a subdivision contains 50 or more lots, but fewer than 50 of those lots are offered for sale under a common promotional plan, those sales would be exempt. Thus in a subdivision of 53 lots in which 4 lots are not offered for sale because, for example, they are permanently dedicated to the public for a park, the sales of the remaining 49 lots are exempt.

If you acquire fewer than 50 lots in a larger subdivision, the offer of these lots may be subject to the Act if you are in any way acting in concert with the previous or concurrent developer of the balance of the subdivision. However, if you acquire fewer than 50 lots in a larger subdivision, the offer of the lots may be exempt if there is no identity of interest between you and the previous or concurrent developer or any form of concerted action constituting a common promotional plan.

(b) *Five Acre Lot Subdivisions.*—(Section 1403(a)(2) [14 U.S.C. 1702(a)(2)] and 24 CFR 1710.10(b)).

This section exempts the sale or lease of lots in a subdivision, all of which are five acres or more in size.

This exemption applies to the entire subdivision and requires that each and every lot in the subdivision be five acres or larger in order for the subdivision to qualify. If a single lot offered pursuant to the common promotional plan is less than five acres in size, no lot in the common promotional plan qualifies for exemption.

If you have two sites which comprise your subdivision and only one of the sites contains lots which are all greater than five acres in size, the offering of these lots would not be exempt under this provision. All lots offered pursuant to a common promotional plan, and therefore comprising a subdivision, must be considered.

A subdivision which is platted or record and contains a single lot which is less than five acres cannot qualify for the exemption even if you offer the lots in multiples which aggregate five acres or more. Further, if the platted lots are all five acres or more in size, but you split a lot and offer a portion for sale which is less than five acres, the exemption would not be available to the subdivision.

Easements or other property reservations do not detract from the total acreage of a lot if the purchaser retains ownership of the property affected by the easement. (Actual ownership in such cases is usually a matter of local law.)

(c) *Improved Lots.*—(Section 1403(a)(3) [15 U.S.C. 1702(a)(3)] and 24 CFR 1710.10(c)).

This Section exempts: (1) the sale or lease of any improved land on which there is a residential, commercial, condominium, or industrial building or (2) the sale or lease of land under a contract obligating the seller to erect such a building on the lot within a period of two years.

For a building or unit to be considered complete, it must be physically habitable and usable for the purpose for which it was purchased. A residential structure, for example, must be ready for occupancy and have all necessary and customary utilities extended to it before it can be considered complete.

If you (the developer or seller) are relying on this exemption and the residential, commercial, condominium or industrial building is not complete, the contract must specifically obligate you, the *seller*, to complete such a building within two years, otherwise the sale is not exempt. The two year period begins on the date the purchaser signs the sales contract. The use of a contract that obligates the *buyer* to build within two years would not exempt the sale.

Furthermore, any conditions which qualify the obligation to complete a building within two years nullify the applicability of the exemption. Likewise, any provision which restricts the purchaser's remedy of specific performance serves to nullify the construction obligation and disqualifies the transaction for the exemption.

However, contract provisions which provide for delays of construction completion dates beyond the two-year period are acceptable if such delays are legally supportable in the jurisdiction where the building is being erected as an impossibility of performance for reasons beyond the control of the developer. Provisions to allow time extensions for such things as acts of God or material shortages are generally permissible.

(d) *Court Ordered Sales.*—(Section 1403(a)(4) [15 U.S.C. 1702(a)(4)] and 24 CFR 1710.10(d)).

This Section exempts the sale or lease of real estate under or pursuant to court order. Sales which are typically exempt under this provision are judicial sales

pursuant to foreclosure or lien enforcement. The sale of real estate pursuant to a court order in a bankruptcy proceeding would not be exempt when, under the terms of the bankruptcy proceedings, the Trustee or Debtor in Possession is to continue selling the subdivided land in the normal course of business.

If there is specific direction by the court to sell designated lots in a prescribed manner and the court reviews and approves each and every sale, those sales would be exempt.

(e) *Evidences of Indebtedness.*—(Section 1403(a)(5) [15 U.S.C. 1702(a)(5)] and 24 CFR 1710.10(e)).

This Section exempts the sale or lease of evidences of indebtedness secured by a mortgage or deed of trust on real estate. The sale of such notes, which is common in the industry, is exempt unless the method of operation has been adopted for the purpose of evading the requirements of the Act.

(f) *Securities.*—(Section 1403(a)(6) [15 U.S.C. 1702(a)(6)] and 24 CFR 1710.10(f)).

This Section exempts the sale of securities issued by a real estate investment trust.

(g) *Government Sales.*—(Section 1703(a)(7) [15 U.S.C. 1702(a)(7)] and 24 CFR 1710.10(g)).

This Section exempts the sale or lease of real estate by any government or government agency. This exemption extends to the sale or lease of land by a city, State, or foreign government as well as the sale of land by the U.S. Government. However, it does not exempt sales or leases of lots by Federal or State chartered and regulated institutions such as banks or savings and loan associations nor does the fact that the development is insured or guaranteed under a Federal or State program exempt the lot sales.

(h) *Cemetery Lots.*—(Section 1403(a)(8) [15 U.S.C. 1702(a)(8)] and 24 CFR 1710.10(h)).

This Section exempts the sale or lease of cemetery lots.

(i) *Sales to Builders.*—(Section 1403(a)(9) [15 U.S.C. 1702(a)(9)] and 24 CFR 1710.10(i)).

This Section exempts the sale or lease of lots to builders or to those who purchase for the purpose of resale or lease to builders.

To qualify as exempt, the sale must be to a person who intends to use the lot(s) in the normal course of construction business or to a person who acquires the lot(s) for the purpose of re-selling to such a builder. The term "business" is viewed as an activity of some continuity, regularity, and permanency or means of livelihood.

When relying on this exemption, you must assure yourself that the purchasers or lessors are building contractors or that they are purchasing or leasing the lots for resale or lease to building contractors.

Neither the sale or lease of lots to persons who purchase the lots to have their own homes built is exempt under this provision, nor is the sale or lease of a lot to a business entity which proposes to have a building erected. The sale to a person who is buying a lot for investment with indefinite plans for resale is also not exempt.

(j) *Industrial or Commercial Developments.*—(Section 1403(a)(11) [15 U.S.C. 1702(a)(11)] and 24 CFR 1710.10(j)).

This Section exempts the sale or lease of real estate which is zoned for industrial or commercial development. If there is no zoning ordinance, the exemption is available only if the real estate is restricted to industrial or commercial development by a declaration of covenants, conditions, and restrictions which have been recorded in the official records of the city or county in which the real estate is located. In addition, the following five conditions must exist in order to establish eligibility for this exemption:

(1) Local authorities have approved access from the real estate to a public street or highway. The approved access to a public street or highway must run to the legal boundary of the subdivision (industrial park), but need not run to each and every lot.

(2) The purchaser or lessee of the real estate is a duly organized corporation, partnership, trust or business entity engaged in commercial or industrial business. To be considered "duly organized" a purchaser or lessee must have set up an administrative structure to conduct business, such as: (i) checking accounts; (ii) licenses and permits, if required; (iii) evidence of intent; and (iv) a set of books. The term "engaged in business" implies an activity of some continuity, regularity and permanency or means of livelihood. A new corporation or individual starting a business must be authorized to conduct such business in the jurisdiction in which the subdivision is located.

(3) The purchaser or lessee of the real estate must be represented in the transaction of sale or lease by a representative of its own selection. The term "representative" is not limited to attorneys and does not exclude sole proprietors from representing themselves. Any person can serve as the representative of the purchaser or lessee so long as sufficient evidence can be produced to prove authority to act in that capacity.

(4) The purchaser or lessee of the real estate must affirm in writing to the seller that it is either (i) purchasing or leasing the real estate substantially for its own use, or (ii) it has a binding commitment to sell, lease or sublease the real estate to an entity which meets the requirements of (2) above, is engaged in commercial or industrial businesses, and is not affiliated with the seller or agent. The affirmations should be retained by the developer in accordance with the statute of limitations in the local jurisdiction or for a period of three years, whichever is longer. If the affirmation is included in the contract, a space must be provided for the purchaser to initial immediately following the affirmation clause.

(5) A policy of title insurance or title opinion must be issued in connection with the transaction showing that title to the real estate purchased or leased is vested in the seller or lessor, subject only to such exceptions as are approved in writing by the purchaser or lessee, preferably in a separate document, prior to the recordation of the instrument of conveyance or execution of the lease. The recordation of a lease is not required. Any purchaser or lessee may waive, in writing in a separate document, the requirement that a policy of title insurance or title opinion be issued in connection with the transaction.

Part IV

Statutory Exemption for Land Sold Free and Clear With Purchaser On-Site Inspection: Secretary Must Determine Eligibility (Section 1403(a)(10) [15 U.S.C. 1702(a)(10)] and 24 CFR 1710.11)

(a) *General.*—Real estate offerings which meet all of the eligibility criteria listed under (b) below are exempt from the provisions of the Act. Since this is a real estate exemption and not a subdivision exemption, it is possible for some lots in an offering to qualify while others do not.

In order to be eligible for this exemption, the real estate must have certain characteristics. In addition, you must file documents, which are set forth in the regulations, with the Secretary of HUD and you must obtain the Secretary's approval. The approval, if given, is not retoractive. To retain eligibility for this exemption, you must take certain actions. All of the eligibility criteria are listed below. Retention of the exemption once established is discussed under (g) below.

Developers who wish to maintain control of a subdivision indefinitely through a Property Owners Association, Architectural Control Committee, and/or restrictive covenants may find the requirements of this exemption unsuitable. Therefore, the eligibility criteria under (b) and the definition of terms under (h) should be carefully reviewed before filing for this exemption.

(b) *Eligibility Requirements.*—(1) The regulations require that you file a Claim of Exemption with the Secretary. The required format and instructions for preparation are found in the regulations (Section 1710.11(c)(1)).

(2) The regulations require that you file a Statement of Reservations, Restrictions, Taxes and Assessments with the Secretary and obtain the Secretary's approval of the Statement. The Secretary's approval is not retroactive. The required format and instructions for preparation of the Statement are found in the regulations (Section 1710.11(c)(2)). Basically, the Statement of Reservations, Restrictions, Taxes and Assessments should explain to the purchaser what restrictions and covenants run with the land and what taxes and assessments can be anticipated.

(3) The regulations require that the property be free of all liens, encumbrances and adverse claims at the time the purchaser signs the contract of sale or lease and continue to be free of liens, encumbrances and adverse claims until a deed is delivered to the purchaser. Liens, encumbrances and adverse claims are defined under (h) below.

(4) The regulations provide that if there is a blanket encumbrance with release provisions, the real estate may nevertheless qualify for this exemption if both of the following conditions are met:

(i) The contract of sale requires delivery of a deed free of all liens, encumbrances and adverse claims to the purchaser within 120 days following the signing of the sales contract; and

(ii) Any earnest money deposit, or other payment on account of the purchase price made by the purchaser prior to the effective date of the conveyance is placed in an escrow account fully protecting the interest of the purchaser. The escrow account must be with an institution which has trust powers or in an established bank, title insurance or abstract company, or an escrow company which is doing business in the jurisdiction in which the property is located.

(5) The regulations require that each purchaser or spouse make a personal on-the-lot inspection of the lot(s) before signing the contract to purchase or lease. In addition, the developer or salesperson must sign a written affirmation that the foregoing inspection was made for each sale or lease. The required format and instructions for preparing the developer's affirmation are found in the regulations (Section 1710.11(c)(3)).

(6) The regulations require that, prior to the execution of the contract for sale or lease, a copy of the Statement of Reservations, Restrictions, Taxes and Assessments which was submitted to and approved by the Secretary be delivered to the purchaser or lessee. In addition, you must obtain a receipt from the purchaser or lessee acknowledging that the Statement was delivered as required. The required format and instructions for preparing the receipt are found in the regulations (Section 1710.11(c)(4)).

(c) *Supporting Documentation.*—In addition to filing a Claim of Exemption and a Statement of Reservations, Restrictions, Taxes and Assessments, the regulations require that you submit additional supporting documentation which is set forth in the regulations and described below:

(1) You must submit a plat of the subdivision offering. Each unsold lot which is the subject of the Claim of Exemption must be clearly identified on the plat.

(2) You must submit evidence of title. This evidence may be in the form of a title insurance policy or an attorney's opinion, if the attorney giving the opinion is experienced in the examination of titles and is a member of the bar in the State in which the real estate is located. The evidence of title must be dated within 20 business days of its submission an must identify (or list) all easements, encumbrances, convenants, conditions, reservations, limitations and restrictions affecting the property. If there are easements affecting the real estate for which you are claiming exemption, you should submit a statement indicating the purpose of the easements. Lots covered by the title policy or opinion should be clearly identified.

(3) You must submit a copy of the contract of sale or lease to be used. If there is a blanket encumbrance on the real estate, the contract of sale must specifically state that a deed free of liens, encumbrances and adverse claims will be provided to the purchaser within 120 days of the date the purchaser signed the contract.

(4) If the reservations, restrictions or convenants are recorded, you should submit a copy of the recorded instrument.

(5) If a Property Owners' Association has been formed, you should submit a copy of the Articles of Incorporation and the Association's By-Laws, if available.

(d) *Annual Reporting Requirements.*—The regulations require that by January 31 of each year, you must report to the Secretary any sale or lease made during the preceding calendar year. For purposes of this requirement, all contracts entered, whether or not the transactions closed, must be reported. If no sales occurred, you must submit a written statement to that effect. The instructions for submitting the annual report of sales are found in the regulations (Section 1710.11(e)).

(e) *Amendments.*—You may update the tax information in the Statement of Reservations, Restrictions, Taxes and Assessments without notifying HUD. However, you must submit and obtain approval for any other change either in the information contained in the Statement, (including the addition of lots by replatting), or any change in the status of title. To amend, you should submit a cover letter explaining the purpose of the amendment, a copy of the proposed amended Statement, if appropriate, and any supporting documentation that may be warranted (such as a title opinion if the status of title has changed).

(f) *Adding Property.*—The sale of additional property is not exempt under this provision unless you have obtained the Secretary's approval. A request for exemption for additional property will be treated as a consolidation to the original request but it must be complete in-and-of itself. Therefore, to apply for an exemption for additional property, you must submit a Claim of Exemption; a Statement of Reservations; Restrictions, Taxes and Assessments; current title evidence for the additional property; a plat of the real estate; a copy of the contract to be used; a copy of all recorded reservations and restrictions running with the real estate; and, if available, a copy of the Articles of Incorporation and By-Laws of the Property Owners' Association, if formed.

(g) *Eligibility Retention, Termination and Reapplication.*—(1) Eligibility for this exemption provision can be retained for as long as you operate the real estate offering within the requirements of the exemption. When all the lots subject to the Claim of Exemption are sold, the exemption is automatically terminated. Reacquired

lots which were initially sold under this provision may be sold again without submitting a new Clain of Exemption, Statement of Reservations, Restrictions, Taxes and Assessments and supporting documentation if: (i) all other eligibility requirements of the exemption have been met; and (ii) the exemption is still in effect or was terminated only because the approved lots were sold out. You must, however, retain evidence of compliance, which must be available for review upon demand by the Secretary.

(2) Violations of the provisions of this exemption may result in the termination of the Secretary's approval, and all sales or leases made in violation of the provisions of the exemption or made subsquent to the date of termination may be voidable. Violations which may result in termination include, but are not limited to, the following:

(i) Failure to obtain the purchaser's acknowledgement of receipt of the Statement of Reservations, Restrictions, Taxes and Assessments.

(ii) Failure to use the Statement of Reservations, Restrictions, Taxes and Assessments approved by the Secretary or failure to use the form of contract submitted with your exemption request.

(iii) Changes in the status of title.

(iv) Changes in reservations and restrictions which have not been submitted to and approved by the Secretary.

(v) Failure to meet the annual reporting requirements.

(3) In the event that the Secretary's approval is terminated, you may reapply for the exemption. To reapply, you must submit a new Claim of Exemption; an updated Statement of Reservations, Restrictions, Taxes and Assessments; current title evidence; and a copy of the contract to be used.

(h) *Definitions and Interpretations of Terms.*

The Statute specifies that to be eligible for this exemption, the property must be free and clear of all liens, encumbrances and adverse claims at the time of sale. Certain factors which would normally be considered liens, encumbrances or adverse claims have been specifically cited in the law as exceptions to this requirement. Because the law is specific as to the exceptions, HUD has limited latitude in determining what is and what is not acceptable for purposes of the exemption.

Frequently developers believe that the terms "liens, encumbrances and adverse claims" refer only to monetary liens, such as mortgages or tax liens. In order to understand the exemption criteria and, in particular, the meaning of the terms "liens, encumbrances and adverse claims", you should review the following information.

(1) A lien upon the real estate to secure the payment of money (i.e., mortgage) is not a disqualifying lien if the following conditions are met:

(i) The contract of sale specifically requires delivery of a deed, free of liens, encumbrances and adverse claims, within 120 days of the date the purchaser signed the sales contract;

(ii) The mortgage contains provisions by which the lot can be released from the lien within the 120-day period;

(iii) All earnest money or other payment on account of the purchase price is placed in an escrow account fully protecting the interest of the purchaser pending the conveyance;

(iv) The purchaser's earnest money payment or any other payment by the purchaser is not used to obtain the release from the mortgage.

If these conditions cannot be satisfied and the property is encumbered by a mortgage or similar lien, the sales will not qualify for exemption under this provision.

(2) Property reservations which land developers commonly convey or dedicate to local bodies or public utilities for the purpose of bringing public services to the land being developed, do not constitute unacceptable liens, encumbrances or adverse claims.

Typical easements for roads, water, sewer and electric lines to serve the subdivision are acceptable as well as certain drainage easements.

Easements which have been found unacceptable and have disqualified property for the exemption include easements for high power transmission lines, telephone long lines, pipelines and bridle trails. In addition, the reservation of subsurface oil, gas or mineral rights is unacceptable if the reservation includes the right of ingress and egress upon the property.

In determining whether property reservations and easements are acceptable for purposes of the exemption, we consider the purpose of the reservations and easements and whether or not they are the type of reservations or easements commonly conveyed. Walking or nature trails that meander throughout the property might be considered a public service by some, but only sidewalks that run along the border of the street and provide access are both a public service and the type of easement commonly conveyed.

(3) Taxes and assessments imposed by a State, by any other public body having authority to assess and tax property or by a Property Owners' Association, which under applicable State or local law constitute liens before they are due and payable, are acceptable liens on the property for purposes of the exemption.

Property taxes as well as assessments which may be made by an entity such as a municipal water district are acceptable as are assessments imposed by a duly organized Property Owners' Association which is controlled by the property owners. (An association which is controlled indefinitely by the developer is considered to be an arm of the developer. See (4) below for further explanation.)

Assessments which are personal obligations and cannot constitute liens on the property before they are due and payable are also acceptable.

(4) Property restrictions and covenants which are beneficial to and enforceable by other lot owners or lessees in the subdivision are acceptable liens, encumbrances and adverse claims for purposes of the exemption.

Most property restrictions and covenants designed to control the use of lots, the environment and the aesthetic value of the subdivision are considered beneficial. However, a restriction or covenant which requires lot owners to pay an assessment or fee for the upkeep of the subdivision (e.g., road maintenance) and exempts the developer from paying a proportionate share of the cost is not beneficial. If an individual lot owner must pay a fee based upon the ownership of a lot, the developer must pay a fee on the same basis if the restriction or covenant is to be beneficial and, therefore, acceptable for purposes of the exemption.

Enforceability of the restrictions or covenants by all the lot owners is the factor which causes the most confusion with regard to this exemption. Lack of enforceability is the reason most often cited when real estate does not qualify for the exemption.

Developers who wish to maintain control of their subdivisions until the majority of the lots are sold frequently may find that their interests are in conflict with the requirements of this exemption, and, therefore, should pursue other exemptions or fully register their subdivisions.

If restrictions or covenants reserve rights to the developer, such as the right to approve architectural plans or the exclusive right to place for sale signs on the lots, the restrictions or covenants are not enforceable by other lot owners. For example, a lot owner would have no authority to halt the construction of a barn on the lot adjoining his or her expensive and stylish home if you had

approved the plans for the barn. Another unacceptable provision is one which gives you the unlimited right to amend the restrictions or covenants at will.

HUD realizes that in the initial stages of development, it is not possible for lot owners other than the developer to control the subdivision. Therefore, restrictions or covenants are acceptable if they contain a provision whereby the developer relinquishes its exclusive rights and control either: within one year from the date of the first sale; or within three years from the date of the first sale or when thirty percent of the lots are sold, whichever occurs first.

Many developers choose to give discretionary rights to a Property Owner's Association or an architectural control committee or similar organization. However, when the developer can actually control the organization through voting rights or through the authority to appoint members, HUD views the organization as an arm or extension of the developer and, therefore, an inappropriate organization in which to vest control. The lot owners as individuals or as an organization of lot owners will have or must assume rights and control and the developer cannot have special rights or control beyond the permissible time limit and operate under this exemption. The developer is not required to relinquish enforcements rights.

Relinquishment of your exclusive rights or control of the subdivision may require some deliberate action. For example, if rights or control are to be vested with the Property Owners' Association and you are a member of the association, an election of officers must be held in which lot owners other than you have voting control. When you submit your Claim of Exemption, you should describe the mechanism by which you will ensure that your exclusive rights and control of the subdivision are transferred to the lot owners. Upon relinquishment of control, your votes should be at least one less than the number needed to decide the outcome of an election, regardless of the number of lots you still own.

If, in the initial stages of development, you appointed a majority of the members of an architectural control committee or similar organization, there should be some means by which the other lot owners, upon your relinquishment of control, choose the membership of such committee or organization. Normally, restrictions or covenants which are acceptable for purposes of this exemption will contain a provision requiring an election at such time as you relinquish control.

To determine the date of the first sale, HUD looks to the date that the first contract was signed by a purchaser under a set of restrictions or covenants. Thus, when sales have already been made under a set of restrictions, whether those sales were made by you or a previous developer, you may have to relinquish your rights and control immediately if the allotted time has elapsed and you wish to operate under this exemption.

If you plan to record your restrictions or covenants or amend a previously recorded document, you may save time and money by submitting your proposals to HUD with your Claim of Exemption before recording. HUD will review proposed restrictions or covenants and advise you of any provisions that are unacceptable for purposes of the exemption. If there are unacceptable provisions and you wish to amend them, you may do so and resubmit your proposals without the difficulty of amending a recorded document. Unless the restrictions and covenants are to be incorporated into every deed, they must be recorded before the exemption will be approved, but experience has shown that it is usually to your advantage to postpone recordation until after the restrictions have been reviewed by HUD.

In order for deed restrictions to be enforceable, they must be applied uniformly to every lot in a general plan of development. You should consider this if you intend to have deed restrictions. Unless the restrictions imposed on a lot have been submitted to and approved by the Secretary, the sale is not exempt under this provision.

(5) United States land patents or Federal grants and reservations similar to United States land patents are considered acceptable liens, encumbrances or adverse claims for purposes of the exemption.

Much of the land west of the Mississippi River was originally conveyed by land patents which reserved to the United States mineral and water rights and rights-of-way for canals and ditches. Until the act was amended on October 31, 1978, the reservations in the land patents disqualified much of the land in the western United States from the exemption. These reservations in the title to the property are now acceptable for purposes of the exemption as are similar Federal grants and reservations. Reservations held by States or local governments continue to be unacceptable.

If your property is burdened by a Federal grant or reservation which you believe is similar to the land patents, you should indicate what you believe the similarities to be. In addition, you should state whether the property owner will be compensated in the event that right is exercised.

For example, HUD takes the position that flooding easements which are often reserved to the U.S. Army Corps of Engineers on lakes do not constitute similar grants and reservations and are not acceptable easements for purposes of the exemption. Lots burdened by such easements cannot be sold under this exemption provision.

You should be aware that the fact that a title company will insure against a lien, encumbrance or adverse claim has no bearing in determining whether or not the property will qualify for the exemption.

Part V

Statutory Exemption For Single Family Residence Subdivisions: No HUD Determination Required

(Section 1403(b) [15 U.S.C. 1702(b)] 24 CFR 1710.12)

(a) *General.*

This Section exempts subdivisions from the registration requirements of the Act when certain eligibility criteria are met. This exemption was created by an amendment to the Act which became effective on October 31, 1978. Although the statutory language makes it clear that you do not have to file with HUD, it apparently does not exempt a developer of otherwise eligible lots from providing an effective Property Report to purchasers. There is no exemption from 15 U.S.C. 1703(a)(1) and 1703(b). HUD's interpretation of the legislative history leads us to believe that Congress did not intend this inconsistency. HUD, therefore, intends to take no action to enforce the requirements of 15 U.S.C. 1703(a)(1) and the first sentence of 15 U.S.C. 1703(b) if the lot sales otherwise qualify for the exemption. However, it is HUD's position that any purchaser of a lot sold pursuant to this exemption may, within three business days of signing, revoke any sales contract or agreement to purchase a lot.

You do not need to submit anything or obtain a determination from HUD to operate under this exemption. You are, however, advised to carefully review the eligibility requirements listed and described in (b) below. Note that some of the requirements pertain to the entire subdivision while others apply to the lot being sold. It is recommended that you seek an Advisory Opinion if you have

any question whatsoever as to the applicability of the exemption to your real estate offering. The instructions and format for requesting an Advisory Opinion are contained in Section 1710.16 of the regulations and further clarification is provided in Part VIII of these guidelines.

(b) *Eligibility Requirements.*

(1) The lots must be located within a municipality or county where a unit of local government specifies minimum standards for the development of subdivision lost taking place within its boundaries.

HUD will leave the determination of the actual standards to the prerogative of the unit of local government. However, HUD will consider that there are "minimum standards" for purposes of determining eligibility for this exemption, if some local code or approval standards has been established with respect to the following area:

(i) Lot dimensions;
(ii) Plat approval and recordation;
(iii) Roads and access;
iv) Drainage;
(v) Flooding;
(vi) Water supply; and
(vii) Sewerage disposal.

However, standards imposed by the State and applicable to the developer in the locality are acceptable as meeting the requirements of this exemption.

(2) The subdivision must meet all local codes and standards and be either zoned for single family residences, or, in the absence of a zoning ordinance, be limited exclusively to single-family residences.

If local codes expressly permit incremental development, then only the portions of the subdivision being offered at any given time are required to meet the codes and standards to satisfy this requirement of the exemption. Otherwise, the entire subdivision must qualify.

As the law is written, the subdivision (which includes all lots offered pursuant to a common promotional plan) must consist entirely of single-family residential lots either through zoning or by recorded restriction. Allowances for commercial, industrial, or multi-family structures technically disqualify the subdivision for the exemption. In order to administer this exemption in accordance with what HUD believes Congress intended, HUD takes the following position: (a) if the potentially disqualifying structures are located or planned at a site (see the definition of "site") different from the single-family residence lots, and all other eligibility requirements of the exemption have been met, HUD will take no action to enforce the registration requirements of the Act; and (b) if the commercial or multifamily structures are located or planned at the same site as the single-family residence lots and all other eligibility requirements of the exemption have been met, a no-action position will be considered if it is clear that no affirmative action is necessary in the public interest and for the protection of purchasers. For example, a site may have a small convenience store (a commercial structure) for use by the local residents and qualify for a No-Action Letter if all the other eligibility requirements of the exemption are met. The instructions for requesting a No-Action Letter are contained in Section 1710.18 of the regulations and discussed in Part IX of these guidelines.

HUD has further determined that the existence of special requirements or restrictions for incidental items such as parks, clubs, community centers, schools, open space, etc., does not necessarily disqualify a subdivision for this exemption given the presence of all other eligibility criteria.

In addition, HUD considers mobile homes, townhouses, and residences for one-to-four family use to be single-family residences for purposes of this exemption provision. This definition is in keeping with the Departmental definition applied to all other HUD programs.

(3) The lots must be situated on a paved, public street or highway which has been built to a standard acceptable to the unit of local government in which the subdivision is located or a bond or other surety acceptable to the municipality or county in the full amount of the cost of the improvements must be posted to assure completion to the local standards. In addition, the unit of local government must have accepted, or be obligated to accept, the responsibility of maintaining the public street or highway.

If the streets in your subdivision will be private or will not be paved, lot sales will not qualify for this exemption. Streets or highways will be considered paved if they have an all-weather, hard surface.

The obligation of the local government entity to accept responsibility for maintaining the roads may be evidenced by an ordinance which binds the government to maintain the streets or by a written statement signed by the appropriate government official. If, in your jurisdiction, the State is the government entity which assumes responsibility for maintaining the streets and highways, this requirement may still be satisfied by a written statement from the appropriate State official or a State law by which the State officials are bound.

(4) At the time of closing, potable water, sanitary sewage disposal, and electricity must be extended to the lot, or the unit of local government must be obligated to install such facilities within 180 days. For subdivisions which do not have a central water or sewage disposal system, there must be assurances that an adequate potable water supply is available year-round and that the lot is approved for the installation of a septic tank.

If there are to be central water and sewage disposal systems, the systems must be installed and functional at the time of closing unless the local government is, in fact, obligated to complete the installation of the facilities to the lot within 180 days. The obligation may be in the form of local statute or written agreement signed by the appropriate government authority. A local code or statute which obligates the subdivider or developer to complete installation of water and sewage disposal systems within a certain time does not satisfy this requirement of the exemption.

If there will be no central water or sewage facilities, and the lot is to be served by individual water and sewage disposal systems, there must be assurances that the water supply will be adequate and drinkable throughout the year and that the lot is, in fact, approved for the installation of a septic tank. Assurances of an adequate, drinkable water supply can often be obtained from a local hydrologist or local health department. Approval for the installation of a septic tank, which must be obtained prior to the sale of the lot, must come from the appropriate government authority, usually the local health department, local government engineer or county sanitarian.

Electricity must be extended to the lot by the time of closing unless the unit of local government is obligated to extend electricity to the lot within 180 days of closing.

Unless otherwise defined by local statute, the "time of closing" is the date that legal title to the property is transferred from seller to buyer.

(5) The contract of sale must require delivery of a deed to the purchaser within 180 days after the signing of the sales contract.

If the property is located in a jurisdiction where warranty deeds are not used, a deed which is equivalent to a warranty deed under State law may be used.

(6) A policy of title insurance must be issued in connection with the transaction showing that, at the time of closing, title to the lot purchased or leased is vested in the seller or lessor subject only to such exceptions as may be approved in writing by the purchaser or lessee prior to the recordation of the deed or execution of the lease.

Based upon a review of the legislative history of this exemption provision, HUD will take no action if a title opinion is issued in lieu of a policy of title insurance.

The purchaser or lessee must approve exceptions to the title in writing prior to the recordation of the deed or execution of the lease. In order to satisfy this requirement, you may want to obtain the purchaser's written approval of exceptions to title prior to closing, although the actual title policy or opinion must be current at the time of closing and show that title is vested in the seller. If closing occurs and the purchaser does not approve the exceptions to title in writing prior to the recordation of the deed, the sale would not be exempt under this provision.

The party that bears the cost of the title insurance policy is not relevant to the eligibility criteria for the exemption.

(7) Each and every purchaser or spouse must make a personal, on-the-lot inspection of the lot to be purchased or leased prior to signing a contract to purchase or lease.

(8) To qualify for this exemption, there can be no direct mail or telephone solicitations or offers of gifts, trips, dinners or other such promotional techniques to induce prospective purchasers or lessees to visit the subdivision or to purchase or lease a lot. There is no prohibition against using the mails or telephone to respond to inquiries from potential purchasers. Newspaper advertising is acceptable as is use of brochures on a limited scale, such as distribution in real estate offices and home shows.

In order to qualify for this exemption, you must have complied with the requirements pertaining to advertising and promotional methods from October 31, 1978, the date that this exemption was signed into law.

Part VI

Regulatory Exemptions: No HUD Determination Required

(24 CFR 1710.13)

(a) *General.*

The Secretary of HUD has established several regulatory exemptions from the registration and full disclosure requirements of the Act (i.e., filing a Statement of Record and furnishing a Property Report). These exemptions are self-determining and do not require a submission to HUD. However, if you are in doubt as to eligibility for any of these exemptions, it is advisable to obtain an Advisory Opinion as described in Section 1710.16 of the regulations and clarified in Part VIII of these guidelines to avoid possible violations of the law.

A developer must meet all the eligibility criteria at all times. At the point-in-time that a developer fails to meet the eligibility criteria, the exempt status will immediately end. Further, if there are reasonable grounds to believe that the exemption in a particular case is not in the public interest, the Secretary may then deny further eligibility of an otherwise eligible subdivision or site for the exemption but only after notice and an opportunity for hearing. Proceedings under this provision will follow the requirements set forth in the regulations (Section 1720.105 *et seq.*) and be patterned after the notice and time requirements of a proceeding pursuant to Section 1710.45(b)(1) of the regulations. For a further discussion of these proceedings see Part VII(a) of these guidelines.

If a sale meets any one of the following requirements, it qualifies for exemption from the registration and full disclosure requirements of the Act.

(b) *Eligibility Requirements.*

(1) *Inexpensive Lots*—The sale or lease of a lot for less than $100, including closing costs, is exempt if the purchaser or lessee is not required to purchase or lease more than one lot. This exemption is available on a lot-by-lot basis. The entire subdivision need not qualify.

(2) *Leases for Limited Duration*—The lease of a lot for a term of five years or less is exempt if the terms of the lease do not obligate the lessee to renew. This exemption is available on a lot-by-lot basis. The entire subdivision need not qualify.

(3) *Incidental Sales by Builders*—The sale or lease of up to twenty-five percent of the lots (not to exceed fifty lots) in a subdivision is exempt if the remaining seventy-five percent of the lots are sold with completed buildings, sold under a contract obligating the seller to erect a building within two years or sold to builders.

Thus, if you have a subdivision of 160 lots, you can sell up to 40 lots (25 percent) to individuals under this exemption if the remaining 120 lots are sold either with a house on the lot, with a contract obligating you to construct a house on the lot for the purchaser within two years, or to building contractors. You may, at your own risk, sell 25 percent of your lots to individuals in the initial stages of development. However, if you later find that you cannot sell the balance of the lots in the manner necessary to qualify for the exemption, you may face the prospect of voidable sales for violations of the law. Therefore, you are cautioned to seriously consider all aspects of the exemption and your future sales operation before relying on the exemption.

Typically, exempt sales or leases under this provision are made in a primary homesite subdivision to persons wishing to hire a contractor of their choice to custom build their home.

(4) *Lots Sold to Developers*—The sale or lease of lots to a person who is engaged in a bona fide land sales business is exempt. For a transaction to qualify for this exemption, the purchaser must be a person who plans to subsequently sell or lease the lot(s) in the normal course of business. The term "business" refers to an activity of some continuity, regularity and permanency or means of livelihood. The sale or lease of lots to an individual who is buying the property for investment (to be sold at some unforeseeable time in the future) would not be exempt under this provision. This exemption is available on a lot-by-lot basis, although most transactions would presumably include more than one lot. The entire subdivision need not qualify.

(5) *Adjoining Lot*—The sale or lease of a lot to a purchaser who owns the contiguous lot which has a residential, commercial, or industrial building on it is exempt. This exemption permits you to sell or lease unimproved lots to persons wishing to enlarge the property on which their home or business is located. This exemption is available on a lot-by-lot basis.

(6) *Minimal Annual Sales*—The sale or lease of lots in a subdivision is exempt if you have not during the past five calendar years and will not in the future sell or lease more than twelve lots in a calendar year and if each purchaser makes an on-the-lot inspection of the real estate which is being purchased or leased.

This provision exempts low volume sales operations which typically are incidential to a separate business and promoted by word-of-mouth. Since the sales made during the past five years are taken into account, the residual sales in large subdivisions will not immediately qualify for this exemption. If the subdivision is new and no sales have been made, sales can still qualify if you restrict future sales to no more than

twelve per calendar year and each purchaser makes an on-the-lot inspection of the real estate which is being purchased or leased. This is clearly an exemption for which the entire subdivision must qualify.

(7) *Lots in a Site*—The sale or lease of lots in a site which is part of subdivision is exempt if the site has fewer than 50 lots and if each purchaser or spouse has made a personal on-the-lot inspection of the lot(s) before signing a contract to purchase or lease.

For example, a subdivision may be comprised of several scattered sites which are offered pursuant to one common promotional plan. If you have three sites containing 38, 57 and 12 lots respectively the sites are considered one subdivision if offered pursuant to a common promotional plan. That is, they are offered in the same advertisements or through the same sales agent, and comprise one subdivision of 107 lots. However, under this exemption, lots sold from a site containing fewer than 50 lots are exempt if they are not designated or known by the same or similar name and each purchaser or spouse makes a personal on-the-lot inspection of the lot(s) before signing a contract to purchase or lease. If, for instance, the three sites mentioned above containing 38, 57 and 12 lots respectively, are not contiguous and not known by the same or similar name, sales from the 38 and 12 lot sites are exempt. If, however, the 38 lot site is known as Bill's Happy Valley, the 57 lot site is known as Bill's Happy Acres and the 12 lot site is known as Sleepy Hollow, only the sales from the latter site are exempt under this provision. The similarity in the names of Bill's Happy Valley and Bill's Happy Acres creates one site of 95 lots. (The similarity of names may be disregarded if the distance between sites with similar names is so great as to preclude a common market.)

Regardless of the status of a site, the number of lots and the characteristics of the offering will be considered in determining whether an entire common promotional plan (of which the site is a part) qualifies for any subdivision exemption. For example, you may be offering one site of 30 2-acre parcels and one site of 60 5-acre parcels. If the lots in the two sites are advertised together and use the same sales force, they are part of a common promotional plan, but sales from the 30-lot site would be exempt under this provision, and sales from the 60-lot would not be exempt. (The exemption for lots of five acres or greater requires that every lot in the subdivision, i.e., every lot offered pursuant to a common promotional plan, be five acres or greater in size). If, in the example given, the two sites were *not* offered pursuant to a common promotional plan, the sales in the 30-lot offering would not be under the jurisdiction of the Act and sales in the 60-lot subdivision would be exempt under Section 1710.10(b) of the regulations.

This exemption is intended to relieve the developers of small, scattered offerings of the requirement to fully register their subdivisions. This exemption may also apply to real estate brokers who have an ownership interest in more than 50 lots as long as each and every purchaser or spouse makes a personal on-the-lot inspection of the lot(s) before signing a contract to purchase or lease.

If you intend to rely on this exemption, it is important that you understand what a subdivision is, how a common promotional plan is determined, and what constitutes a site. These terms are defined in Part II of these guidelines.

This exemption is available on a site-by-site basis. The entire subdivision need not qualify.

(8) *Lot Sales to a Government*—The sale or lease of real estate to a government or government agency is exempt. This exemption is available on a lot-by-lot basis. The entire subdivision need not qualify.

(9) *Sale of Leased Lots*—The sale of a lot or lots which the purchaser has leased for at least one year and on which the purchaser has maintained his or her primary residence for that same period of time is exempt. Typically, these sales will occur in a mobile home subdivision. This exemption is available on a lot-by-lot basis. The entire subdivision need not qualify.

Part VII

Regulatory Exemption for a Local Offering: Notification Required

(24 CFR 1710.14)

(a) *General.* This Section exempts from the registration and disclosure requirements of the Act (but not the fraud provisions) the sale or lease of lots in sites which are offered locally. A site is a group of contiguous lots or lots designated or known by the same or similar name, whether such lots are actually divided or merely proposed to be divided. You should carefully review the introduction to these guidelines regarding the definition of "site". No determination from HUD is required to operate under the exemption, but sales are not exempt, regardless of meeting other eligibility criteria, until you provide notice to the Secretary in the form prescribed in the regulations (Section 1710.14(e)), that the site will be operated in total compliance with all the eligibility requirements.

A developer must meet all the eligibility criteria at all times. At the point-in-time that a developer fails to meet the eligibility criteria, the exempt status will immediately end. Further, if there are reasonable grounds to believe that the exemption in a particular case is not in the public interest, the Secretary may then deny further eligibility of an otherwise eligible subdivision or site for this exemption but only after notice and an opportunity for hearing. Proceedings under this provision will follow the requirements set forth in the regulations (§ 1720.105 *et. seq.*) and be patterned after the notice and time requirements of a proceeding pursuant to § 1710.45(b)(1) of the regulations.

Such proceedings may be initiated for the purpose of denying further eligibility for the exemption because of such circumstances as apparent misrepresentations in the advertising material or the contract of sale, bankrupcty proceedings, legal action for fraud brought against the developer by purchasers or Federal, State or local governmental authorities or the sale of lots with such adverse conditions that full disclosure is deemed necessary to inform and protect purchasers.

If you have more than one site and you intend for any site to be exempt under this provision, you should pay particular attention to the restrictions on advertising and promotion imposed by the regulations and described under (2) and (3) of the eligibility requirements below. If you have one site that will conform to the requirements and one site that will not, you must take precautions not to mingle the promotions in such a way as to disqualify an otherwise eligible site for the exemption. For example, if the promotion of Country Acres meets the requirements for the exemption and the promotion of Lake Springs Development does not, persons responding to advertisements for Lake Springs Development should not be referred to Country Acres if you wish to operate Country Acres under the exemption. Similary, a sales office at Lake Springs Development could not have promotional material relating to Country Acres if the advertising for Lake Springs Development did not meet the requirements of the exemption and if you intend for Country Acres to be exempt under this provision. Sales

persons should be advised of the restrictions on advertising and promotion if you intend to operate under this exemption. Although a site can be exempted without evaluating all of the aspects of a common promotional plan, the method used to attrat potential purchasers must be carefully considered.

This exemption is intended to exempt the sale of lots in small, local real estate offerings.

(b) *Eligibility Requirements.—(1) The regulations require that since the effective date of the Act, April 28, 1969, the site has contained and will continue to contain fewer than 200 lots. In determining the number of lots, even those lots which may be sold in an otherwise exempt manner, such as the sale of lots with houses on them, will be counted.*

(2) The regulations require that since the effective date of this exemption, the promotion of the site must be directed only to permanent residents of the local community in which the site is located. Promotion is considered to be any marketing technique used to sell lots or attract prospective purchasers to the site. If an offering ceases to qualify because of any change in promotion, the exemption will no longer be available even if the promotion is brought back into compliance with the eligibility requirement.

Promotion of the site must conform to the following criteria:

(i) Advertising in newspapers and periodicals must be restricted to publications which are published either in the county in which the site is located or in the nearest adjacent county. Regardless of where published, advertising placed in periodicals directed to tourists, such as magazines, pamphlets and guides found in hotels, or materials distributed on street corners, at sport shows and the like, disqualifies the site for the exemption. Similary, advertising placed in real estate publications intended for an audience beyond the local community disqualifies the site for the exemption.

(ii) Billboards promoting the site must be located within 15 miles of the site. Distances are determined by road mileage.

(iii) Distribution of handbills, brochures, pamphlets and other printed advertising or promotional material can only be made at the location of the real estate or at the office of the broker.

(iv) Any real estate brokers offering the lots must have their offices in the county in which the site is located or in an adjacent county.

(3) Since the effective date of the regulations creating this exemption, the site cannot be advertised on television or radio or by direct mail or telephone solicitation. In addition, there can be no offers of gifts, trips, dinners or other similar promotional techniques to induce prospective purchasers or lessees to visit the site or to purchase or lease a lot.

Incidental use of the telephone or of the mails in the normal course of business, such as to respond to inquiries regarding the site, does not disqualify a site for this exception.

(4) Each purchaser/lessee or spouse must make a personal on-the-lot inspection of the real estate to be purchased or leased before signing the sale or lease agreement.

(5) Each purchase or lease agreement must contain:

(i) A clear and specific statement informing the purchaser or lessee as to who is responsible for providing and maintaining the roads, water facilities, sewer facilities and recreational amenities; and

(ii) A provision giving the purchaser or lessee three business days following the signing of the contract of sale or lease an unconditional and non-waivable right to cancel the contract and receive a refund of all consideration paid.

(6) In addition to (5) above, each purchase agreement must provide for delivery of a deed which is free of blanket encumbrances.

(7) The real estate cannot be located in a flood plain or a flood prone area as designated by a Federal, State or local agency unless the community is participating in the Federal Flood Insurance Program. Only those particular lots located in a flood plain or flood prone area are affected by this requirement. Therefore, lots in any part of a site that are not designated as a flood plain or flood prone area may still be eligible for the exemption.

(c) *Records.*—You are responsible for maintaining records to establish that all eligibility requirements of this exemption have been met. You may be required, upon demand by the Secretary, to produce such records. There is no prescribed form for this documentation but you must ensure that adequate evidence of eligibility can be presented should the need arise.

For example, you must be able to show that the contracts used contain the required provisions. In addition, you must be able to demonstrate that advertising and promotion have been directed only to permanent residents of the local community in which the site is located. For example, copies of promotional material should be retained.

(d) *Notice to the Secretary.*

If you determine that the site meets and will continue to meet all of the eligibility requirements of Section 1710.14 which are described above and you wish to conduct the sales program in full compliance with those requirements, no approval is needed from HUD but a notice of intent to operate under this exemption must be provided to the Secretary. The form of the notice is found in Section 1710.14(e) of the regulations. The exemption is not effective or operable until proper notice has been given to the Secretary. The date of the postmark is the effective date of notice.

Sales made prior to the effective date of notice are not exempt under this provision and are in violation of the Act. Violative sales are voidable at the option of the purchasers and may subject you to additional liabilities.

Part VIII

Advisory Opinion: Secretary's Determination May Be Requested (24 CFR 1710.16)

(a) *General.*

When it is not clear that an offering is either exempt under the self-determined statutory provisions of Section 1710.10 and 1710.12, the self-determined regulatory provisions of Sections 1710.13 and 1710.14 or whether jurisdiction exists, you may request an Advisory Opinion to clarify the situation. The filing requirements are found in Section 1710.16 of the regulations and are described in (b) and (c) below.

The material to be submitted with all requests for Advisory Opinions is described under (b) below. In most cases, depending on the provision under which you are claiming exemption, other additional documentation is needed before an opinion can be given. Review (c) below to determine what additional documentation is customarily needed before submitting your request.

(b) *Basic Requirements.*

(1) The regulations require that you submit a $250.00 filing fee in the form of a certified check, cashier's check or postal money order made payable to the Treasurer of the United States. This fee is not refundable.

(2) The regulations require that you submit a comprehensive statement describing in detail the characteristics and operation of the subdivision or site for which you are requesting the Advisory Opinion. You should also specify the provision of the Act or regulations under which you believe

your sales to be exempt or why you believe there is no jurisdiction.

(3) You must submit an affirmation in the form found in Section 1710.16(b)(3) of the regulations.

(c) *Additional Requirements.*

Depending on the provision under which you are claiming exemption, you may be required to submit additional information. Beginning with the exemption under Section 1710.10(a) of the regulations and ending with Section 1710.14, the additional information that should be submitted with your request for an Advisory Opinion is listed below. In some cases, further information or documentation may be requested after your submission has been reviewed by HUD.

(1) To obtain an Advisory Opinion pertaining to 1710.10(a), you should submit a plat of the subdivision. In addition, you should substantiate whether or not other properties in which you have an interest are offered under the same common promotional plan. Therefore, you should submit a listing of any other properties in which you have an interest and the geographic relationship of those properties to the subdivision for which you are claiming exemption. If other properties are divided or proposed to be divided, indicate the total number of lots planned. Indicate those properties which will be offered by the same sales personnel or through the same sales office as the subdivision for which you are claiming exemption. Describe how the lots are marketed, i.e., who sells the lots, how the lots are advertised, whether prospective purchasers are referred between subdivisions, etc.

(2) To obtain an Advisory Opinion pertaining to § 1710.10(b), submit a plat of the subdivision with the acreage of each lot clearly delineated thereon. In addition, you should substantiate that all lots offered under the same common promotional plan are greater than five acres in size. Therefore, you should describe all properties in which you have an interest and the geographic relationship of such properties to the subdivision for which you are claiming exemption. Describe how the properties are marketed, i.e., who sells the lots, how the lots are advertised, whether purchasers are referred between subdivisions, etc.

(3) To obtain an Advisory Opinion pertaining to § 1710.10(c), submit a copy of the contract of sale or lease.

(4) To obtain an Advisory Opinion pertaining to § 1710.10(d), submit a copy of the court order.

(5) To obtain an Advisory Opinion pertaining to § 1710.10(e), describe the security arrangement and submit a copy of the evidence of indebtedness.

(6) To obtain an Advisory Opinion pertaining to § 1710.10(f), no additional documentation is customarily required to be submitted with the request.

(7) To obtain an Advisory Opinion pertaining to § 1710.10(g), specify the Government agency selling the property.

(8) To obtain an Advisory Opinion pertaining to § 1710.10(h), no additional documentation is customarily required to be submitted with the request.

(9) To obtain an Advisory Opinion pertaining to § 1710.10(i), specify how you will assure yourself that the purchaser or lessee is engaged in the business of building or is acquiring the real estate for resale or lease to a builder.

(10) To obtain an Advisory Opinion pertaining to § 1710.10(j), describe how the subdivision and method of disposition meet the requirements of the exemption. Submit a plat and supporting documentation, including a copy of the instrument containing the purchaser or lessee affirmation and evidence of the zoning or, in the absence of zoning, restrictive covenants.

(11) To obtain an Advisory Opinion pertaining to § 1710.12, describe how the subdivision and the method of operation meet the requirements of the exemption. Address requirements (1) through (8) as set forth under § 1710.12 of these guidelines (see Part V). Include a copy of the contract of sale. Describe the marketing and promotion of the subdivision. (All lots offered under one common promotional plan are included in the subdivision.)

(12) To obtain an Advisory Opinion pertaining to § 1710.13(b)(1), no additional information is customarily required to be submitted with the request.

(13) To obtain an Advisory Opinion pertaining to § 1710.13(b)(2), submit a copy of the lease.

(14) To obtain an Advisory Opinion pertaining to § 1710.13(b)(3), state the total number of lots platted of record and offered under one common promotional plan. Indicate the approximate number of lots to be sold (a) with houses on them, (b) under a contract obligating you to complete a building within two years, (c) to builders, and (d) to individual consumers.

(15) To obtain an Advisory Opinion pertaining to § 1710.13(b)(4), submit information to substantiate your claim that the purchaser is in the land sales business.

(16) To obtain an Advisory Opinion pertaining to § 1710.13(b)(5), submit a map showing the lot on which the purchaser owns a residential, commercial or industrial building and the lot to be purchased.

(17) To Obtain an Advisory Opinion pertaining to § 1710.13(b)(6), submit a list of all lots sold under the same common promotional plan during the past five years. (Review Part II(a) of these guidelines for an explanation of common promotional plan). Indicate the date of each sale. State whether you have been involved in the sale of any other real estate during the past five years and indicate how you intend to restrict future sales.

(18) To obtain an Advisory Opinion pertaining to § 1710.13(b)(7), submit a plat of the site and list the name and geographic location of all other properties in which you have an interest.

(19) To obtain an Advisory Opinion pertaining to § 1710.13(b)(8), name the Government entity.

(20) To obtain an Advisory Opinion pertaining to § 1710.13(b)(9), state the circumstances under which the purchaser has lived on the lot for one year or more and submit a copy of a lease or other agreement entitling the purchaser to occupy the lot.

(21) To obtain an Advisory Opinion pertaining to § 1710.14, describe how the site and method of disposition meet the requirements of the exemption. Submit a plat and supporting documentation. Describe the marketing program in detail. Include names of newspapers in which the site is advertised and where such newspapers are published and distributed. Submit copies of available printed advertising material. State the names and business locations of real estate brokers with whom the property is listed. State the name(s) of any other site(s) in which you have an interest and describe the marketing program of each site in which you have an interest. Submit a copy of the purchase or lease agreement to be used. State whether the site or part of the site is located in a flood plain or flood prone area and, if so, whether the community is participating in the Federal Flood Insurance Program. Indicate how you will assure that each purchaser or spouse has made an on-the-lot inspection of the lot to be purchased before signing a contract to purchase or lease.

Part IX

No-Action Letter: Secretary's Determination May Be Requested

(24 CFR 1710.18)

The availability of expanded exemptions under the regulations results in exempting most transactions which may previously have warranted the issuance of a No-Action Letter. Nevertheless, there may be instances when one or more sales or leases fall within the purview of the Act but not qualify for an exemption, although the circumstances of the sales or leases may be such that no affirmative action is needed to protect the public interest and prospective purchasers.

In such instances, you may request a No-Action Letter. The request should include a thorough explantion of the proposed transaction(s) and the facts and supporting documentation necessary to demonstrate that no affirmative action is needed to protect the public interest and prospective purchasers in the particular situation. If your request for a No-Action Letter is based upon a belief that the offering is ineligible for an exemption due to a minor technicality, you should demonstrate how other provisions of the particular exemption are met.

The issuance of a No-Action Letter will not affect any right or remedy which the purchaser may have under the Act, including the right to rescind a contract, but HUD will not take any affirmative action to enforce the Act or require registration. In addition, the issuance of a No-Action Letter will not preclude any future agency action which may become necessary because of new information or a change in the circumstances.

In no event will a No-Action Letter be issued if the sale or lease has already occurred.

There is no prescribed format for requesting a No-Action Letter. You should describe the circumstances as fully as possible following a rule-of-thumb that too much information is better than too little. Upon review of the information submitted, additional clarification may be required to permit a final determination.

* * * * *

Effective Date: The foregoing Exemption Guidelines become effective June 11, 1979.

Issued at Washington, D.C. on April 13, 1979.

Geno C. Baroni,

Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.

[Docket Number N-79-923]

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April 23, 1979

Part V

Department of Energy

Office of Hearings and Appeals

Class Exception Relating to Motor Gasoline Allocation Regulations

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

10 CFR Part 211

Class Exception Relating to Motor Gasoline Allocation Regulations

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Proposed Decision and Order Granting Class Exception Relief; Solicitation of Written Comments; Notice of Interim Decision and Order.

SUMMARY: The Office of Hearings and Appeals of the Department of Energy hereby gives notice of the issuance of a Proposed Decision and Order in which it determined that a class exception should be granted for the month of April to certain retail sales outlets and wholesale purchaser-consumers of motor gasoline. This class exception applies to each motor gasoline retail sales outlet and wholesale purchaser-consumer whose average monthly purchases of motor gasoline during the period from October 1978 through February 1979 were 35 percent greater than the firm's actual purchases in April 1978. The DOE has requested comments on the Proposed Decision and Order. Notice is also given of an Interim Order issued by the Office of Hearings and Appeals which immediately implements the class relief set forth in the Proposed Decision and Order.

DATES: Comments on the proposed decision and order must be received by May 11, 1979.

Effective date of the interim decision and order: April 19, 1979.

ADDRESSES: Send comments to: Thomas L. Wieker, Deputy Director, or Richard W. Dugan, Assistant Director, Office of Hearings and Appeals, Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker or Richard W. Dugan, (202) 254–9691.

SUPPLEMENTARY INFORMATION: On April 17, 1979, the Economic Regulatory Administration (ERA) of the Department of Energy issued a Notice in which it stated its intention to promulgate further rules with respect to the allocation of motor gasoline during the period from May through September 1979. The ERA indicated that the rule it intends to adopt would provide that allocations for this period would be based on actual purchases during the corresponding month of 1978. The ERA also indicated that an adjustment for growth which has occurred since the conclusion of the base period would be accorded to certain retail sales outlets and wholesale purchaser-consumers. In addition, the Economic Regulatory Administration stated that it intended to provide a growth adjustment for the month of April 1979. That adjustment would permit a retail sales outlet or a wholesale purchaser-consumer to substitute its average monthly purchases of motor gasoline during the October 1978 through February 1979 period for its April 1979 base period volume if that average exceeded the April 1978 purchase level by at least 35 percent. After considering the ERA announcement and the cases currently pending before the Office of Hearings and Appeals, the conclusion was reached that serious hardships, gross inequities, and unfair distribution of burdens would result unless the growth adjustment contemplated for April 1979 were implemented immediately in the form of a class exception.

On February 22, 1979, the ERA issued an Activation Order which implemented certain provisions of the standby motor gasoline allocation regulations. Pursuant to that Order, the base period for motor gasoline was changed from the corresponding month of 1972 to the corresponding month of the period July 1, 1977 through June 30, 1978. The revised base period applied to all firms in the petroleum industry and was intended to remain in effect for the three month period from March 1 through May 31, 1979. Subsequent to the implementation of the Activation Order, the Office of Hearings and Appeals began receiving a large number of requests for exception and stay of the new base period regulations. In fact, as of April 15, 1979, the Office of Hearings and Appeals received more than 2,000 petitions related to the ERA Activation Order.

The experience of the Office of Hearings and Appeals in evaluating these submissions provides a very strong indication that relief will ultimately be granted to a firm which has experienced a substantial growth in volume since the month of April 1978. Our evaluation of the cases which have been considered thus far indicates that there is a very strong likelihood that a firm in this situation will be able to satisfy the exceptions criteria which have been utilized in considering cases of this type. Furthermore, it appears that a firm which has experienced a substantial increase in volume in recent months will ultimately qualify for an increased allocation during the month of April under the provisions of the rule which the ERA has stated it intends to adopt. However, in view of the limited staff resources of the Office of Hearings and Appeals and the likelihood that a final Rule will not be adopted by the ERA until the last day of April, it appears that firms which will in all likelihood qualify for an increased allocation during the month of April will not benefit from DOE actions until very near or after the end of the month.

In order to fairly alleviate the gross inequities, serious hardships, and unfair distribution of burdens that are currently being experienced, we have therefore concluded that a class exception should be approved immediately. This class exception is intended to apply to all retail outlets and wholesale purchaser-consumers whose average monthly purchasers during the October 1978 through February 1979 period were at least 35 percent more than their actual purchases during April 1978. A firm that meets these criteria will be accorded an allocation for the month of April which is equal to its average monthly purchases during the October 1978 through February 1979 period.

This class exception is being issued in the form of a Proposed Decision and Order. The Office of Hearings and Appeals specifically invites comments from any interested person with regard to the findings reached and the actions discussed in the Proposed Decision and Order. Any such comments should be filed by May 11, 1979 and be addressed to the individuals identified at the beginning of this Notice.

Although comments are being requested with respect to the Proposed Decision and Order, the record in this proceeding demonstrates that public interest considerations strongly indicate that the approval of an interim exception is necessary pending the completion of the Proposed Decision and Order process. Consequently, an Interim Order has been issued implementing the class exception relief on an immediate basis. However, if the final action taken by the Office of Hearings and Appeals in response to comments received by interested persons differs from the action discussed in the Proposed Decision and Order, appropriate adjustments can be made to take into account the gasoline that has been furnished pursuant to the Interim Order. Those adjustments could for example be made in the allocations of the affected firms in the period subsequent to April 1979.

Issued in Washington, D.C., April 19, 1979.

Melvin Goldstein,

Director, Office of Hearings and Appeals.

April 19, 1979.

Proposed Decision and Order of the Department of Energy

Application for Exception

Docket Designation: Class Exception Proceeding Adjusting April 1979 Base Period Volumes of Motor Gasoline For Retail Sales Outlets and Wholesale Purchaser-Consumers

Case Number: DEE-3726

On April 17, 1979 the Economic Regulatory Administration (ERA) of the Department of Energy issued a formal Notice stating its intention to promulgate certain rules with respect to the allocation of motor gasoline. According to the ERA announcement, the corresponding month of 1978 would be used as the base period in allocating motor gasoline during the May through September 1979 period. The ERA announcement also states that an adjustment to base period volumes will be implemented for growth that has occurred subsequent to the base period.

Beginning in May 1979, the rule would allow retail sales outlets and wholesale purchaser-consumers to substitute their average monthly purchases in the period October 1978 through February 1979 as their base period volume if that average was at least ten percent greater than their purchases in the applicable base period month. Suppliers responsible for supplying the adjusted volumes would be able to certify the increases upward to their suppliers. Suppliers would be required to make these adjustments for purchasers who qualify without any need for DOE approval.

The rule would also allow substitution of the October 1978 through February 1979 monthly average as the April 1979 base period volume if that average was at least 35 percent greater than purchases in April 1978.

After considering the ERA announcement in light of the exception applications that are presently pending before the Office of Hearings and Appeals, we have concluded that serious hardships, gross inequities and unfair distribution of burdens will result unless the growth adjustment contemplated for April of 1979 is implemented immediately. Consequently an exception will be granted to the class that will be benefited if the ERA rule is ultimately adopted. The exception will permit any retail sales outlet or wholesale purchaser-consumer whose average purchases of motor gasoline during the October 1978 through February 1979 period are 35 percent greater than its purchases in April of 1978 to use as its base period for the month of April 1979 the average volumes purchased during the October 1978 through February 1979 period.

I. *Recent Regulatory Changes in the Base Period Used for Allocation Purposes*

In order to understand the basis for our conclusion that class exception relief is warranted in this proceeding, it is necessary to review the events which led to the ERA notice.

For more than four years, the base period for motor gasoline allocation has been the month in the 1972 calendar year that corresponds to the current month. However, towards the end of 1978 some difficulties were perceived in continuing to use the 1972 period as a basis for allocation purposes. As a result of a number of factors, including the curtailment of crude oil production in Iran, the surplus gasoline market in the United States was inadequate to satisfy the demands of all retail outlets. As a result, several refiners began allocating gasoline and certain purchasers began to receive less than their adjusted 1972 base period volumes. This situation produced a number of serious distortions in the gasoline distribution system. Because of changes that occurred subsequent to 1972, a significant number of small businessmen faced a situation in which their gasoline allocation would be drastically curtailed as compared to the gasoline which they purchased during prior months. In many cases, this curtailment meant that these small firms would be forced out of business resulting in great personal hardship for the individuals involved. These problems were called to the attention of the Office of Hearings and Appeals in individual Applications for Exception filed in *Shell Oil Co.*, (Case No. DEE-2014); *Texaco, Inc.* (Case No. DEE-2041); *Chevron U.S.A. Inc.*, (Case No. DEE-2135); *Mobil Oil Corp.*, (Case No. DEE-2163); *Farmland Industries, Inc.*, (Case No. DEE-2166); *Amoco Oil Co.*, (Case No. DEE-2152) and *Roarda, Inc.*, (Case No. DEE-2203).

The hardships and distortions in the marketplace which were occurring were also vividly demonstrated in the data submitted by these firms and the oral testimony received at hearings convened by the Office of Hearings and Appeals. *Shell Oil Co.*, Case No. DEE-2014, Transcript of December 8, 1978 Hearing; *Texaco, Inc.*, Case No. DEE-2041, Transcript of January 12, 1979 Hearing; *Chevron U.S.A. Inc.*, Case No. DEE-2135, Transcript of February 13, 1979 Hearing; and *Amoco Oil Co.*, Case No. DEE-2152, Transcript of February 22, 1979 Hearing. On the basis of the data presented, we concluded that gross distortions in the distribution system for gasoline would occur unless an exception were granted to certain applicants. We further concluded that a significant number of small businessmen would incur an unfair distribution of burdens unless an exception were granted from the general rules governing motor gasoline allocations. Appropriate relief was accordingly provided. *Shell Oil Co.*, Case No. DEE-2014 (Proposed Decision issued February 13, 1979); *Texaco, Inc.*, Case No. DEE-2041 (Proposed Decision issued January 26, 1979); and *Chevron U.S.A. Inc.*, Case No. DEE-2135 (Proposed Decision issued February 28, 1979). In addition, this matter was called to the attention of the ERA for appropriate changes in the general rules.

On February 22, 1979, the ERA changed the base period used for gasoline allocations. On that date, the ERA issued an emergency order which activated certain portions of the Standby Petroleum Product Regulations. 44 Fed. Reg. 11202 (February 28, 1979). Under ERA Standby Regulation Activation Order No. 1 (the Activation Order), the base period was changed for all firms in the petroleum industry from the corresponding month of 1972 to the corresponding month of the period July 1, 1977 through June 30, 1978. The revised base period was stated to be effective for the three month period from March 1 through May 31, 1979.

II. *Exception Applications From the Base Period Established in the ERA Activation Order*

Immediately after the ERA issued the Activation Order, the Office of Hearings and Appeals began receiving a great number of exception applications relating to the use of the new base period. For example, during the month of March 1979 alone more than 1,200 applications were filed. By April 15, 1979 the number of filings exceeded 2,000.

The majority of the exception applications involved the contention that the new base period, i.e. the months of March, April and May 1978, did not reflect the firm's current operations. The further argument was made that the use of the new base period would have a devastating effect on the applicant's business operations. In evaluating these submissions, the Office of Hearings and Appeals observed three basic factual patterns which it concluded did result in very serious burdens for small businessmen attempting to carry on

retail gasoline operations. The first situation involves a situation in which:

(i) the monthly volume of motor gasoline which the firm has purchased and sold since June 1978 is substantially in excess of the average monthly volume which it actually purchased and sold during the new base period;

(ii) this increase in sales volume does not merely reflect a general increased demand for motor gasoline but instead is attibutable to a significant alteration in the ongoing business practices of the firm; and

(iii) the failure to grant an exception will adversely affect the firm to a significant degree and might well jeopardize its continued existence as a viable business entity.

Duncan Oil Co., Case No. DEE–2259 (March 15, 1979) (Proposed Decision and Order).

Our experience in analyzing the numerous exception applications that have been filed from Activation Order No. 1 generally indicates that when the first factor referred to above is present, the other factors are generally also present. *See, e.g., Duncan Oil Co.*, Case No. DEE–2259 (Proposed Decision issued March 15, 1979) *Ken Warbrick Chevron*, Case No. DEE–2249 (Proposed Decision issued March 19, 1979); *DeLozier Chevron*, Case No. DEE–2300 (Proposed Decision issued March 19, 1979); *C. M. Spiegel Oil Co.*, Case No. DEE–2308 (Proposed Decision issued March 23, 1979); *Kimberly Gas Mart*, Case No. DEE–2291 (Proposed Decision issued March 26, 1979); *Hardell Corp.*, Case No. DEE–2579 (Proposed Decision issued March 28, 1979); *Robert F. Saak*, Case No. DEE–2655 (Proposed Decision issued March 29, 1979); *Joshua Widman*, Case No. DEE–2562 (Proposed Decision issued March 30, 1979); *Stinson Grocery*, Case No. Dee–2492 (Proposed Decision issued April 2, 1979); *Irv's Service Center*, Case No. DEE–2624 (Proposed Decision issued April 2, 1979); *Colemen's Service*, Case No. DEE–2728 (Proposed Decision issued April 3, 1979); *Big Gulf Service Station*, Case No. DEE–2661 (Proposed Decision issued April 4, 1979); *Saginaw Valley Oil*, Case No. DEE–2440 (Proposed Decision issued April 4, 1979); *Rosemont Exxon*, Case No. DEE–2698 (Proposed Decision issued April 4, 1979); *Gary Wheeler*, Case No. DEE–2717 (Proposed Decision issued April 4, 1979); *Ellis Burns Exxon*, Case No. DEE–2852 (Proposed Decision issued April 5, 1979); *Embrey's Mobil*, Case. No. DEE–2672 (Proposed Decision issued April 6, 1979); *Red Clay Creek Exxon*, Case No. DEE–2720 (Proposed Decision issued April 13, 1979); *Weekly's Exxon Service Station*, Case No. DEE–3036 (Proposed Decision issued April 13, 1979).

A second group of cases have involved instances in which a firm has made a significant capital investment in a retail outlet and was unable to realize the benefits of that investment until after the base period. In *Leo Anger Inc.*, Case No. DEE–2326 (Proposed Decision issued March 23, 1979), we stated that an exception would be granted where a showing is made that:

(i) a substantial capital investment was made by a firm with the expectation that the investment would enable the applicant to increase its sales of motor gasoline and therefore realize an economic benefit from the investment;

(ii) the increased sales volume and the intended benefits of that capital investment could not be realized until after the July 1977 through June 1978 base period; and

(iii) in the absence of an exception increasing its allocation of gasoline, the firm will not be able to realize the intended benefits of the capital investment and will be adversely affected to a significant degree.

Other cases which reflect this same factual pattern are: *Howard Moor*, Case No. DEE–2604 (Proposed Decision issued March 30, 1979); *Summit Car Care Center*, Case No. DEE–2461 (Proposed Decision issued March 30, 1979); *Mr. K Exxon*, Case No. DEE–2470 (Proposed Decision issued March 30, 1979); *H&H Manhattan Shell, Inc.*, Case No. DEE–3150 (Proposed Decision issued April 3, 1979); *Webster's Self Service Gulf Station*, Case No. DEE–2575 (Proposed Decision issued April 4, 1979); *Johnson Oil Co.*, Case No. DEE–2972 (Proposed Decision issued April 6, 1979); *Lyle Whitman*, Case No. DEE–3115 (Proposed Decision issued April 6, 1979); *JSR Auto Center*, Case No. DEE–2370 (Proposed Decision issued April 6, 1979); *Wilson Shell Service*, Case No. DEE–2876 (Proposed Decision issued April 6, 1979); *Brook Plaza Exxon*, Case No. DEE–2938 (Proposed Decision issued April 9, 1979); *P&W Oil Co.*, Case No. DEE–2890 (Proposed Decision issued April 9, 1979); *A. A. Grocery*, Case No. DEE–3113 (Proposed Decision issued April 10, 1979); *Big Quick Stop*, Case No. DEE–3390 (Proposed Decision issued April 12, 1979); *Hunters Lodge Exxon*, Case No. DEE–3713 (Proposed Decision issued April 17, 1979).

The third factual pattern in which exception relief has been granted from the Activation Order involves a situation in which:

(i) Unusual or anomalous events occurred during a base period;

(ii) those conditions seriously distort the intended use of the base period for measurement purposes as a relatively normal and customary period of business activity; and

(iii) the consequent distortion that resulted has adversely affected the firm in a significant manner.

Cases in which exception relief has been approved on the basis of these criteria are: *Harrison Gas & Oil*, Case No. DEE–2348 (Proposed Decision issued March 21, 1979); *Bruder's Exxon*, Case No. DEE–2448 (Proposed Decision issued March 23, 1979); *Frank Moody's Mobil*, Case No. DEE–2635 (Proposed Decision issued April 5, 1979); *Furtado's Garage*, Case No. DEE–2783, (Proposed Decision issued April 5, 1979); *Exxon of Olney*, Case No. DEE–2454 (Proposed Decision issued April 6, 1979).

In addition to these individual case decisions, the Office of Hearings and Appeals has also received during the past month exception applications from several major oil companies. The submissions generally have sought relief on behalf of small independent businessmen that operate retail service outlets which they lease from the oil company. *See Amoco Oil Co.* (Case Numbers DST–2257; DES–2257; DEE–2257); *Shell Oil Co.* (Case Numbers DST–2894; DES–2894; DEE–2894); *Chevron U.S.A. Inc.* (Case Numbers DST–3153; DES–3153; DEE–3153).

The Amoco Oil Company submissions best typify the cases of this nature. In its submissions, Amoco identified the following three classes of branded retail dealers who it alleged would suffer severe hardships, gross inequities, or unfair distribution of burdens unless Amoco were permitted to supply them with more motor gasoline than their base period allocations:

(1) Retail gasoline dealers who have made capital investments of $10,000 or more in their marketing facilities in 1978, excluding investments in gasoline, tires, batteries, and motor accessories (TBA) inventories, and who will not realize the benefit of such investments on the basis of the volume of gasoline purchased during the March-May 1978 base period (Class 1).

(2) Retail gasoline dealers whose current demand, as measured by their average monthly purchases during the period October 1, 1978 through January 31, 1979, has increased by 35 percent or more over the monthly average pruchases during the March-May 1978 base period due to substantial changes in 1978 in the Station's mode of operation or demand pattern (Class 2).

(3) Retail gasoline dealers not qualifying under (1) or (2) above, whose

current demand, as measured by the average monthly purchases during the period October 1, 1978 through January 31, 1979, has increased since the March-May 1978 base months, and who will be unable to recover their expenses under normal operating practices if forced to return to the 1978 base volume and as a result will suffer significant operating or financial difficulties (Class 3).

Application for Exception (Case No. DEE-2257) at 2.

The Amoco submissions were accompanied by affidavits from approximately 200 individuals that operate retail service stations. Those affidavits taken as a whole provide very strong evidence of the severe impact which the implementation of the Activation Order could have on certain groups of retail station operators. For example, one group of affidavits were submitted by individuals that invested $10,000 or more of their own personal funds in marketing facilities. The financial data included in these affidavits indicate that if the firms were required to return to their March, April and May 1978 volumes they would be unable to realize any of the benefits of the changes in their operations that the capital investment project was designed to achieve. Other affidavits from individuals in this same group include financial data that indicate that a return to the base period would not only mean the collapse of their business venture but would also involve possible foreclosure of the homes that they mortgaged in order to finance the capital investment in their retail service station.

Another group of affidavits was submitted by dealers whose current demand of motor gasoline, as measured by their average monthly purchases during the period October 1, 1978 through January 31, 1979, has increased by 35 percent or more over the March-May 1978 base period due to substantial changes in 1978 in the stations' mode of operation or nature of the demand pattern. The information included in these affidavits indicated that the significant increases in volumes over the base period were due to such operational changes as conversion from a conventional full service station to a self-service station, rebuilding a site to make it a "pumper" type operation, the addition of car washes and convenience stores, and the modernization of existing facilities by the installation of canopies, cashier offices, electronic dispensers, or additional islands. Other affidavits indicated that the closing of other area stations, the development of nearby shopping centers or subdivisions, and improved high-traffic road access had also contributed to increased demand. All of the affidavits submitted by individuals whose volumes had increased at least 35% over base period volumes indicated that they will experience considerable difficulty in meeting their monthly debt obligations and operating expenses if they are able to obtain only the allocation permitted under the Activation Order. Many of these dealers indicated that since the implementation of the Activation Order they have had to lay off employees, reduce operating hours, and utilize personal savings in order to meet operating expenses.

A final group of affidavits was submitted by individuals whose monthly purchases during the period October 1, 1978 through January 31, 1979 have increased since the March-May 1978 base period, and who will be unable to recover their monthly operating expenses if they are forced to return to the 1978 base volume. These affidavits indicate that prior to the implementation of the Activation Order, these firms were selling sufficient volumes of motor gasoline to enable them to operate at a profit. These affidavits indicate, however, that because the dealers' gallonage has been reduced to March-May 1978 levels, they are unable to meet their normal operating expenses. According to the affidavits of this group of individuals, in order to bring expenses into line with their March-May allocations, they have had to release employees and substantially reduce operating hours. The affidavits indicate however that even with these modifications in normal operating practices, the individuals involved are nonetheless incurring a net loss. These dealers state in their affidavits that continued losses of this type will ultimately result in the termination of their businesses.

The material which appeared in the affidavits was underscored by testimony of witnesses that appeared at a hearing called to consider the Amoco submissions. Transcript of March 28, 1979 Hearing at 12-19; 26-32; 35-39.

On the basis of the extensive data submitted by Amoco, the Office of Hearings and Appeals concluded that certain groups of branded Amoco dealers would incur an irreparable injury unless immediate relief were approved on a class basis. The further conclusion was reached that the data demonstrated a very substantial probability of success in ultimately establishing that the dealers involved were subject to a serious hardship, gross inequity or unfair distribution of burdens. *Amoco Oil Co.*, Case No. DST-2257 (Decision and Order issued March 28, 1979); *Amoco Oil Co.*, Case No. DES-2257 (Decision and Order issued April 16, 1979); and *Amoco Oil Co.*, Case No. DEE-2257 (Proposed Decision and Order issued April 16, 1979). On the basis of the detailed findings made in the Proposed Decision and Order which the Office of Hearings and Appeals issued, alternative base periods were approved for those dealers that fell into the following two classes:

(1) Those branded Amoco retail sales outlets:

(a) whose average monthly purchases during the months of October, November and December 1978 and January 1979 were 35 percent greater than their average purchases during the March, April and May 1978 base period; and

(b) that increased their purchases of motor gasoline as described in subparagraph (a) because of—

(i) physical or operational changes in marketing operations, including conversion to self-service operations, newly rebuilt or converted gasoline only "pumper" type operations, or the addition of car washes; or

(ii) changes in demand patterns since the applicable base month, resulting from (i) closing of other area stations, or (ii) new shopping center or subdivision developments, or (iii) improved high-traffic road access.

(2) Branded Amoco outlets:

(a) that made a capital investment of $10,000 or more in marketing facilities during the course of 1978; and

(b) whose average monthly purchases commencing with the first month after completion of the investment through February 28, 1979 are 30 percent greater than the monthly average volume purchased during March, April and May 1978.

The immediate adverse impact which Amoco demonstrated would result if the Activation Order were applied to another group of dealers led the Office of Hearings and Appeals to adopt an unusual remedy in implementing exception relief. The group of dealers involved in this class generally consists of each Amoco branded retail outlet:

(a) whose average monthly purchases during the months of October, November and December 1978 and January 1979 were 20 percent greater than its average purchases during the March, April and May 1978 base period; and

(b) that submits a profit and loss statement to Amoco which indicates that the firm will incur an operating loss for the current month involved unless it receives exception relief.

The Decision which the Office of Hearings and Appeals issued in this case describes in the following manner the procedure used to implement relief for this class and the justification for the use of the procedure:

In the temporary stay decision, the Office of Hearings and Appeals implemented relief for the members of Class 3 in a unique manner. Instead of following its standard procedures, which would involve analysis of the financial data submitted by each retail dealer to reach a judgment as to whether or not relief would be granted, the Office of Hearings and Appeals authorized Amoco itself to receive the data necessary to determine eligibility for membership in the class and to implement the proper level of exception relief.

In adopting this novel remedy, the temporary stay decison established objective criteria to define both the class of firms entitled to relief and the measure of relief to be extended to qualifying firms. Under the criteria established, a firm will qualify as a member of Class 3 if (i) its average monthly purchases of gasoline during the months of October 1978 through January 1979 were 20 percent greater than its average purchases during the March–May 1978 base period; (ii) it submits a profit and loss statement to Amoco which indicates that the firm will incur an operating loss for the month involved unless it receives an allocation equal to its monthly average gasoline purchases during the October 1978 through January 1979 period; and (iii) all equity owners of the firm submit an affidavit to Amoco stating that the information provided in the profit and loss statement is true. In addition, the profit and loss statements must be certified as correct by an independent certified public accountant, and adjusted so that (i) the compensation paid to equity owners of the firm does not exceed certain specified levels; (ii) depreciation which the firm reports is computed in the same manner as in 1978; (iii) the statement does not include any acceleration of interest or other discretionary payments; and (iv) the rent paid to Amoco in connection with the lease of the outlet is within specified limits.

The determination to permit this novel type of procedure in which Amoco receives data and makes a determination as to the individual firms that qualify for relief, was based on the conclusion that the use of this approach was necessary to prevent immediate irreparable injury to many small businesses. We believe that this same procedure should be utilized in the present exception as well, and that the unusual remedy is justified by the presence of extraordinary circumstances including the four factors discussed below.

As of March 28, 1979 the Office of Hearings and Appeals received more than 1,200 petitions for relief from the Activation Order. As the number of petitions filed in response to the Activation Order continues to grow, the ability of the Office to respond in an expeditious fashion to those requests is necessarily constrained. Under these circumstances, we believe that permitting Amoco to make the determination as to class membership is not only warranted, but necessary for immediate implementation of the relief provided. In addition, the likelihood of error or abuse in carrying out these provisions has been reduced by the use of strict objective criteria for determining membership in the class. Furthermore, the type and measure of exception relief is limited. Third, Amoco must retain and file documents and reports of a comprehensive nature regarding the firms involved and these materials will provide an adequate factual record from which the DOE may evaluate the basis of the action taken by Amoco. Finally, the diligence and competence which Amoco has demonstrated throughout this proceeding persuades us that Amoco can properly carry out its responsibilities in connection with this unique form of class exception relief.

Amoco Oil Co., Case No. DEE–2257 (Proposed Decision and Order issued April 16, 1979), Slip opin. at 12–13.

III. Appropriate Remedy Under Present Circumstances

The same type of drastic impact on the operation conducted by small businessmen that appears in the *Amoco* proceeding also appears in the records of the individual exception cases which were referred to in the prior portion of this Decision. During the past four weeks the Office of Hearings and Appeals has issued over 135 Proposed Decisions and Orders involving exception applications from the standby allocation regulations. An even greater number of separate stays and temporary stays have been issued during this period. These cases involve more than 2,000 service stations and 25 jobbers. On the basis of the analysis of the record in those cases, some form of relief has been approved in more than 94 percent of the cases analyzed.

The majority of pending cases in which determinations have not yet been issued involve situations in which a retail outlet has experienced substantial growth subsequent to the month of April 1978. Our analysis of the record of the cases in which growth of that type has occurred indicates that there is a very strong probability that the firms involved will satisfy the standards which have already been articulated in cases such as *Duncan Oil Co., supra; Leo Anger, Inc., supra; Harrison Gas & Oil, supra;* and *Amoco Oil Co., supra.* Consequently it is most probable that some form of exception relief would ultimately be approved for the month of April 1979 for a retail outlet that has experienced considerable growth since April 1978.

Even aside from the probability that exception relief will ultimately be granted, retail sales outlets that experienced considerable growth subsequent to the base period will in all likelihood eventually receive relief from their base period volumes through another mechanism. As noted at the outset of this Decision, the ERA has just published a notice of its intention to issue a rule that would establish a different base period volume in April 1979 for all retail outlets and wholesale purchaser-consumers that experienced a 35 percent increase in their purchases of motor gasoline. The comparison in applying the 35 percent figure is the firm's purchases in April of 1978 as compared to its monthly average purchases during the period October 1978 to February 1979.

There is therefore a great probability that relief will eventually be afforded for the month of April 1979 to firms that experienced significant growth subsequent to the base period. The relief would be accorded either through the analysis of the individual exception applications submitted by firms in that position or through the eventual adoption of the rule discussed in the ERA Notice. However, despite the probability that relief will eventually be afforded to firms in this class, the mechanisms described above under which relief will eventually be afforded are in our judgment inadequate to alleviate the serious hardships, gross inequities and unfair distribution of burdens that are now being experienced. As discussed above, more than 2,000 individual cases seeking relief from Activation Order No. 1 have now been filed with the National Office of Hearings and Appeals. In view of the limited resources available, it is most unlikely that decisions could be issued in the majority of these cases before the end of April. Consequently, unless other measures are taken, the adverse

conditions that the firms are now experiencing will continue throughout the month of April. Under the circumstances, it is possible that the relief that would eventually be afforded would certainly come too late to enable some firms to maintain their operations.

A similar situation could also materialize with respect to the ERA rule. Any final rule governing allocations will in all probability not be issued until the last few days of April. Since the rule will not be final until that date, firms that would benefit from it may not be able to obtain sufficient motor gasoline to maintain their economic viability until that date. In addition, the sudden implementation of the ERA rule at the end of April could require significant adjustments in the motor gasoline allocations that had already been furnished prior to that date. The entire distribution system could be seriously overburdened as a result.

On the basis of these considerations, we have concluded that the present mechanisms under which additional motor gasoline would be afforded to retail sales outlets and wholesale purchaser-consumers in the month of April 1979 are insufficient to alleviate the serious hardships, gross inequities and unfair distribution of burdens that are now being experienced as a result of the implementation of the Activation Order. We have further concluded that under the circumstances a class exception should be approved. Under the terms of the class exception, the growth adjustment for the month of April specified in the ERA Order would be implemented and made effective immediately.

IV. Class Exception Criteria

In reaching this decision we have also considered the precedents established by the Office of Hearings and Appeals as to the circumstances in which class actions may properly be maintained. It is our view that the factors present in this proceeding satisfy the applicable standards.

In previous decisions, we have referred to Rule No. 23 of the Federal Rules of Civil Procedure for guidance as to the prerequisites which might be used in administrative class action proceedings. *See American Petroleum Refiners Association, Inc.*, Case No. FEE-4443 (Proposed Decision and Order issued April 9, 1979); *Retroactive Application of the Separate Inventories Amendment*, 4 FEA Par. 83,099 (1976). Under Rule No. 23(a), a class action may be maintained:

Only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

The class for which relief is being approved in this Decision consists of retail sales outlets and wholesale purchaser-consumers whose average monthly purchases of motor gasoline in the period October 1978 through February 1979 were 35 percent greater than their purchases in April of 1978. The members of that class would be permitted to use their average purchases for the October 1978 through February 1979 period as their base period volume for April 1979. In terms of the criteria for class proceedings quoted above, the members of that class consist of at least several hundred of the firms that have already filed individual applications for exception with the Office of Hearings and Appeals. The class undoubtedly also includes other firms that for a variety of reasons have not yet filed exception submissions. The large number of individual firms in the class certainly makes joinder of all members impracticable.

The second criterion referred to above for class proceedings involves a determination as to whether there are questions of law or fact common to the class. That standard has also been satisfied. As discussed in detail in an earlier portion of this Decision, the record in dozens of cases already decided by the Office of Hearings and Appeals indicates that firms that experienced the growth that characterizes the class will incur the same basic type of adverse impact as a result of the Activation Order. Both the factual pattern—the increased sales volumes when the base period is compared to a more recent time period—as well as the adverse impact on the firms involved of the Activation Order are common to the class. Moreover, as stated above, the record of the cases already decided by the Office of Hearings and Appeals indicates that it is most likely that a firm that has experienced considerable growth subsequent to the base period will also satisfy the other specific standards which have already been articulated in Decisions as the basis for the approval of an exception. Under the circumstances, there are not only questions of law and fact common to the class but the claims of the class and the relief sought are also applicable to the entire class. A class exception proceeding will therefore be maintained and the relief formulated above will be implemented for the class.

V. Other Considerations

The Office of Hearings and Appeals has already issued a significant number of Proposed Decisions and Orders as well as Orders involving requests for stay and temporary stay in connection with Activation Order No. 1. The Orders issued in these cases will remain in effect and the proceedings will be completed. However any firm involved in those proceedings may of course elect to take advantage instead of the class relief afforded in this proceeding. In general, other pending cases involving growth in motor gasoline sales since the month of April 1978 will be dismissed. Any such applicant may, however, refile its application for exception if it is incurring a serious hardship, gross inequity or unfair distribution of burdens even after taking into account the relief afforded in this class proceeding.

IT IS THEREFORE ORDERED THAT:

(1) The exception relief specified in Paragraph (3) is hereby granted to each member of the class described in Paragraph (2).

(2) The class to which the exception relief specified in this Order is applicable consists of each retail sales outlet and wholesale purchaser-consumer whose average monthly purchases of motor gasoline during the period October 1978 through February 1979 were 35 percent greater than its purchases in April 1978.

(3) The base period use of motor gasoline of each member of the class described in Paragraph (2) for the month of April 1979 is hereby established as the average monthly purchases of motor gasoline during the October 1978 through February 1979 period.

(4) In the event the base period suppliers of a member of the class designated above are not prime suppliers, the volumes of gasoline which are assigned pursuant to Paragraph (3) may be certified upward by the suppliers and any other nonprimary suppliers.

(5) This is a final order of the Department of Energy of which any aggrieved party may seek judicial review.

April 19, 1979.

Interim Decision and Order of the Department of Energy

Docket Designation: Class Exception Proceeding Adjusting April 1979 Base Period Volumes of Motor Gasoline For

Retail Sales Outlets and Wholesale Purchaser-Consumers

Case Number: DEN-3726

Earlier today the Office of Hearings and Appeals issued a Proposed Decision and Order in which it found that class exception relief should be approved from the current allocation requirements for motor gasoline. *Class Exception Proceeding Adjusting April 1979 Base Period Volumes of Motor Gasoline For Retail Sales Outlets and Wholesale Purchaser-Consumers,* Case No. DEE-3726 (April 18, 1979) (Proposed Decison and Order). The class exception involves Standby Regulation Activation Order No. 1 (the Activation Order) which was issued by the Economic Regulatory Administration (ERA) of the Department of Energy on February 22, 1979. 44 Fed. Reg. 11202 (February 28, 1979). In that Order, the ERA activated certain portions of the Standby Petroleum Product Allocation Regulations in order to update the base period for motor gasoline allocation from the corresponding month of 1972 to the corresponding month of the period July 1, 1977 through June 30, 1978. The revised base period applies to all firms in the petroleum industry and is effective for the three month period from March 1 through May 31, 1979.

The class to which the proposed exception would apply consists of all retail sales outlets and wholesale purchaser-consumers whose average monthly purchases of motor gasoline in the period October 1978 through February 1979 exceeded by 35 percent or more their purchases during the month of April 1978. The relief discussed would permit the members of the class to use the average monthly purchases during the October 1978 through February 1979 period as their base period use in the month of April 1979.

The Proposed Decision, which is hereby incorporated by reference into this determination, discusses in detail the reasons why the class exception is appropriate. In our view, that discussion also leads to the conclusion that the relief should be implemented immediately.

Under Section 205.69A of the DOE Procedural Regulations, an Interim Order may be issued for the purpose of granting exception relief during the pendency of an exception proceeding. According to the regulatory provision:

Notwithstanding any other provisions of this Subpart, the Director of the Office of Hearings and Appeals or his designee may, upon motion or on his own initiative, issue an Interim Order for the purpose of granting exception relief during the pendency of an exception proceeding. Such an order may be issued only after a Proposed Decision and Order has been issued and only if the Office of Hearings and Appeals determines that public interest considerations strongly favor the approval of an interim exception pending the completion of the procedures ordinarily required by this Subpart. In making that determination the Office of Hearings and Appeals shall consider the following factors:

(1) The probability that exception relief will ultimately be granted;

(2) The harm an applicant is likely to incur unless exception relief is approved immediately; and

(3) The harm other persons are likely to incur if the Interim Order is issued.

It is our judgment that a consideration of each of these factors leads to the conclusion that an Interim Order should be issued in this proceeding.

The first factor which we are required to consider in a proceeding of this nature is the probability that exception relief will ultimately be approved. As stated in the Proposed Decision and Order, during the past month the Office of Hearings and Appeals has conducted extensive proceedings involving individual exception applications for relief from the allocations established by the ERA Activation Order. We have also held hearings and issued several comprehensive orders with respect to three requests of a class nature filed by major oil companies. *Amoco Oil Company,* Case No. DST-2257 (Decision and Order issued March 28, 1979); *Amoco Oil Company,* Case No. DES-2257 (Decision and Order issued April 16, 1979); *Amoco Oil Company,* Case No. DEE-2257 (Proposed Decision and Order issued April 16, 1979); *Shell Oil Company,* Case No. DST-2894 (Decision and Order issued March 30, 1979); and *Chevron U.S.A., Inc.,* Case No. DST-3153 (Decision and Order issued April 4, 1979). Those requests involve approximately 1,900 service stations. In approximately 94 percent of the cases involving individual exception applications, relief has been granted. The Proposed Decision and Order in this class exception proceeding is based on the very same factors that were present in the prior cases considered by the Office of Hearings and Appeals. Consequently the record provides a very strong indication that the class exception relief will ultimately be granted.

The second factor to be evaluated in considering whether an Interim Order may properly be granted is the harm an applicant is likely to incur unless exception relief is approved immediately. In the Proposed Decision and Order, we discussed at length the serious adverse impact which the Activation Order was producing for the members of the class. That discussion included a review of the extensive affidavits which had already been submitted in the *Amoco* case as well as the factual situation encountered in those instances in which individual determinations had already been issued. On the basis of our review of the available data, we concluded that the same factual circumstances which already led to exception relief in those cases are present with respect to the members of the class involved in this proceeding. We therefore reached the further conclusion that immediate exception relief was necessary to prevent the members of the class from incurring the same types of serious hardships, gross inequities, or unfair distribution of burdens that were present in the cases that had already been decided. Consequently, the findings in the Proposed Decision indicate that the business operations conducted by the members of the class involved in this proceeding are likely to be very seriously impaired unless exception relief is provided on an immediate basis.

The record also indicates that other persons affected by the approval of exception relief to the class are not likely to be adversely affected to a substantial degree by the issuance of the Interim Order. The record of the prior exception proceedings conducted by the Office of Hearings and Appeals indicates that there was little opposition to the approval of an exception increasing a firm's base period volume in those instances in which a retail sales outlet's or wholesale purchaser-consumer's purchases of motor gasoline increased substantially since the base period. Moreover, the ERA has already announced its intention to issue a general rule implementing the relief specified in the class exception proceeding. The Interim Order would therefore only have the effect of providing that relief immediately and thereby minimizing the adverse impact on members of the class from the delay involved in the issuance of the final ERA rule. The immediate implementation of the relief would also avoid possible disruptions to certain motor gasoline distribution systems that might otherwise result if readjustments had to be made as a result of the promulgation of the ERA rule during the last few days of the month of April. Furthermore, adjustments could be made in the gasoline allocated to a firm in

subsequent months if the comments received in response to the Proposed Decision and Order indicate that changes should be made before that determination is issued in final form.

On the basis of these considerations, we have concluded that public interest considerations strongly favor the approval of an interim exception pending the completion of the procedures relating to the Proposed Decision and Order.

IT IS THEREFORE ORDERED THAT:

(1) Effective immediately, the exception relief specified in Paragraph (3) is hereby granted to each member of the class described in Paragraph (2).

(2) The class to which the exception relief specified in this Order is applicable consists of each retail sales outlet and wholesale purchaser-consumer whose average monthly purchases of motor gasoline during the period October 1978 through February 1979 were 35 percent greater than its purchases in April 1978.

(3) The base period use of motor gasoline of each member of the class described in Paragraph (2) for the month of April 1979 is hereby established as the average monthly purchases of motor gasoline during the October 1978 through February 1979 period.

(4) In the event the base period suppliers of a member of the class designated above are not prime suppliers, the volumes of gasoline which are assigned pursuant to Paragraph (3) may be certified upward by the base period suppliers and any other nonprimary suppliers.

Dated: April 19, 1979.

Melvin Goldstein,
Director, Office of Hearings and Appeals.

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Reader Aids

Federal Register

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Monday, April 23, 1979

INFORMATION AND ASSISTANCE

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AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
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CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	LABOR			LABOR
	HEW/FDA			HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

*NOTE: As of January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going Into Effect Today

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HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Government National Mortgage Association—

17640 3-22-79 / Guaranty of mortgage backed securities, graduated payment

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

Last Listing Apr. 12, 1979

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 2½ hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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3. The important elements of typical Federal Register documents.
4. To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

WASHINGTON, D.C.

WHEN: May 4 or 18; June 1 or 15; July 6 or 20.

WHERE: Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.

RESERVATIONS: Call Mike Smith, Workshop Coordinator, 202-523-5235.

KANSAS CITY, MISSOURI

WHEN: May 17, at 10 a.m.

WHERE: Federal Building, Room 140, 601 E. 12th Street, Kansas City, Missouri.

RESERVATIONS: Call 816-374-2466.